

Full Court.]

[June 9.]

PRIMEAU v. MOUCHELIN.

PRIMEAU v. PANTEL.

*Promissory notes—Consideration—Rescission of contract—Will.*

Appeals from verdicts for defendants rendered in a County Court in action on promissory notes given by defendants for some cattle purchased from plaintiff.

Plaintiff's title to the cattle was under the will of her deceased husband, which gave her only a life estate in all his property. Defendant Mouchelin was a son and defendant Pantel a son-in-law of the plaintiff and of the deceased. When selling the cattle, the plaintiff claimed and apparently believed that they were hers absolutely. Defendants apparently thought that the deceased had died intestate, and supposed that that gave plaintiff an absolute title to the cattle. After purchasing and giving the notes, defendants learned of the will. Thereafter they paid a year's interest on the notes. They did not return, or offer to return, the cattle. Until sued they apparently did not dispute the plaintiff's right to sell. The defence was on the ground that plaintiff had misrepresented her title and that there was a failure of consideration.

*Held*, that there was no fraud and that, as the plaintiff was able to give at least a title to the cattle for her life, there was not a total failure of consideration, that the defendants were bound, on learning the contents of the will, to repudiate the transactions at once, that, having failed to do so, and having kept the cattle and paid interest on the notes with knowledge of the facts, they had elected to affirm their purchases. No fraud was shewn, and defendants had not been disturbed in either title or possession.

Appeals allowed with costs, and judgments ordered to be entered in the County Court for the amounts claimed and costs.

*Howell*, K.C., for plaintiff. *Wilson* and *Dubuc*, for defendants.

Full Court.]

PENNER v. WINKLER.

[June 9.]

*Ejectment—Right of action by owner who has leased the land to another—Agreement for lease.*

Defendant Winkler had a lease of the land in question from the plaintiff for one year from 1st October, 1902, and the other defendants were in occupation of the land under Winkler's lease. Before the expiration of the year, plaintiff made a verbal agreement with one Nichol by which the latter was to have the