

Com. Pleas.]

NOTES OF CANADIAN CASES.

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to be paid the same wages as one B. got, which appeared to be \$75 a month; that the brewings did turn out well, and he became entitled to the wages; that he continued working for A. M. for the wages until 21st June, when owing to financial troubles A. M. left leaving plaintiff's wages unpaid, and A. M.'s father, S. M., who was a large creditor, took charge of the business, and, as plaintiff alleged, verbally promised that if plaintiff would continue he would not only pay him his wages for the past, but for the future, and that plaintiff remained on these terms until August 21st, when he was discharged. Both A. M. and S. M. denied the agreement as alleged by plaintiff. The jury found that the agreement was as claimed by the plaintiff, and a verdict was entered against A. M. on this basis for the time prior to his departure, and against S. M. for such time and also for the subsequent period.

Held, that in any event there could be no recovery as to the time prior to A. M.'s departure, because the alleged promise was merely collateral and should have been in writing, and as to the subsequent period the evidence showed that the plaintiff could only recover on a *quantum meruit*, and he had been so paid; and that as to A. M. the evidence was most conflicting, and would lead to the conclusion that the minds of the parties had never been *ad idem*; and therefore the recovery should have only been on a *quantum meruit*; and that unless plaintiff would consent to reduce his verdict to an amount ascertained on such basis, there must be a new trial.

John King, for the plaintiff.

Osler, Q.C., for defendant.

MCKENZIE V. McLAUGHLIN.

License—Right to revoke—Estoppel—Parol evidence.

The plaintiff, by a lease under seal, leased to the defendant a shop, save and except the bottom portion of the east window, and save and except a portion of the shop described by metes and bounds. The defendant urged that prior to his accepting the lease and entering into the consideration for such acceptance, an independent and collateral parol agreement, separate and distinct, and not made part of

the written agreement, was entered into, whereby the defendant was to have permission or license to remove certain rough shelving, etc., and to fit up the shop, including the portion reserved by the plaintiff, with handsome and ornamental show-cases during the continuance of the term, so as to give the shop a uniform appearance for the defendant's benefit; and that in pursuance of such agreement, and with plaintiff's consent, the show-cases were put in.

Held, that the evidence of such agreement was not admissible as adding to the written agreement; but even if admissible it failed to establish the agreement; but, even assuming it to be proved, if it amounted to an easement or grant of an incorporeal right it should have been under seal, and not being under seal the license would be merely a parol license not incidental to a valid grant, and therefore revocable; and the fact of its being, as alleged, for a sum certain could make no defence; and also that the plaintiff was not estopped by his conduct from denying the defendant's right to retain the show-cases.

McCarthy, Q.C., for the plaintiff.

Moss, Q.C., for the defendant.

Osler, J.]

RE BELL TELEPHONE CO. ET AL. V. THE MINISTER OF AGRICULTURE.

Patent Act, 1870—Court, constitution of—Dominion Parliament—Ultra vires—Power of Minister.

Sec. 28 of the Patent Act, 1872, after providing for certain cases in which patents are to be null and void, continues: "Provided, always, that in case disputes should arise as to whether a patent has or has not become null and void under the provisions of this section, such disputes shall be settled by the Minister of Agriculture or his Deputy, whose decision shall be final."

Held, that a court or judicial tribunal for the determination of the matters referred to in the section was constituted by the Act; and that the constitution of such a court was not *ultra vires* of the Dominion Parliament as infringing upon subjects of exclusive Provincial legislation; and also that it was competent for the Minister to decide as to the existence of disputes arising for his decision.