

action being brought for anything done under a conviction, whether there was jurisdiction to make the conviction or not, so long as the conviction remains unquashed and in force.

Held, also, though doubting, that the 17th sec. of said Act, which entitles the magistrate to full costs as between attorney and client, where in such action he obtains a verdict in his favour, has been repealed by the O. J. Act, sec. 9, sub-sec. 2, and Rule 428; and that such costs are now in the discretion of the judge or Court.

Oster, Q.C., for the plaintiff.

Hutchinson, and *Aylesworth*, for the defendants.

CULVERWELL V. BIRNEY.

Commission on sale of land.

An agent selling land may recover commission from his principal, notwithstanding the agent has received commission from the purchaser, where the principal has agreed that the agent might receive such commission, or where the principal knows that the agent is selling and intends to obtain such commission, and does not object.

J. K. Kerr, Q.C., for the plaintiff.

Fullerton, for the defendant.

BAKER V. MILLS.

Trespass—Damage to land—Entry by devisee.

The plaintiffs claimed, as devisees of S., for damages alleged to have been sustained by them by reason of the cutting and removal of certain timber on land devised by S. to them. Prior to S.'s death he mortgaged the land to a building society who, after the alleged trespass, sold the land to the defendant. The land was uncultivated, and there had been no entry by the plaintiffs.

Held, that the action was not maintainable.

Reeve, Q.C., for the plaintiffs.

Shepley, contra.

CLEGG V. GRAND TRUNK RAILWAY CO.

Accident—Negligence—44 Vic. ch. 22 (O.), 46 Vic. ch. 24 (D.)—Statement of claim—Omission of necessary averments.

Action by plaintiff, an administrator of C., for damages under 44 Vic. ch. 22 (O.), by reason of the omission to pack a frog on the Midland Railway which defendants were operating.

Held, defendants were not liable, that the Midland Railway was a railway connecting with the defendants' railway, and under 46 Vic. ch. 24 (D.), was exempt from the operation of the Ontario Act.

Held, also, that by reason of the omission to state, as required by sub-sec. 2 of sec. 8 of said Act, and to prove in the statement of claim that the defendants knew that the frog was not packed, or that deceased did not know it, or that he had notified the defendants or any person superior to himself in the service of the defendants, or that such person was not aware thereof, would preclude any recovery.

G. T. Blackstock, for the plaintiff.

Walter Nesbitt, for the defendants.

AUSTIN MINING CO. V. GEMMEL.

Company—Detention of books, etc., by secretary—Meeting for election of directors—Whether properly called—Quorum—Pleading.

Action by plaintiffs, a mining company incorporated under the Canada Joint Stock Company's Act, 46 Vict. c. 43, by letters patent, against the defendant, whom it was alleged had ceased to be secretary of the company, for the conversion and detention of certain books, etc., of the company. The defendant set up as a defence that he was still secretary of the company, on the ground that the board of directors who had appointed a new secretary had not been legally elected, because the meeting for the election had not been duly called; and also that there was not a proper quorum to transact business.

Held, under the circumstances set out in the case, the meeting was duly called, and there was a proper quorum.

Held, also, that the defendant must be deemed to have unlawfully detained the books, etc. There was an election of directors *de facto*