Full Court.] [Dec. 22, 1888.

REGINA *v.* PERRIN.

Justice of the Peace—Summary conviction under R. S. O. c. 214, s. 15—Dog killing sheep—Award of compensation—Proving character of dog—Territorial jurisdiction of justices—R. S. C. c. 178, s. 87.

The owner of a sheep killed or injured by a dog can, under R. S. O. c. 214, s. 15, recover the damage occasioned thereby, without proving that the dog had a propensity to kill or injure sheep, and the Act applies to a case where the dog has been set upon the sheep.

It did not appear upon the face of the conviction in question that the offence was committed within the territorial jurisdiction of the convicting justices ot the peace, but upon the deposition, it was clear that it was so committed.

Held, that the saving provision of s. 87 of R. S. C., c. 178, should be applied, and the order *nisi* to quash the conviction was discharged.

Shepley, for the defendant.

Q. B. Div'l Ct.] [Nov. 19, 1888.

BANK OF HAMILTON *v.* ISAACS.

Evidence—Action against indorser of promissory note—Denial of indorsement—Admissibility of evidence as to circumstances connected with the indorsement—New trial.

I., the maker, and F., the indorser, of a promissory note, were sued upon it, and F. denied his indorsement.

At the trial an indenture of conveyance of land from I. to F. was put in without objection, and I. testified that it was given to secure F. against his indorsement of certain notes of which the one sued on was a renewal. There was nothing in the indenture to show that it was given for anything but the expressed consideration of $1,500, and it was not pretended that such consideration was paid.

Held, that it was competent for F. to show what the indenture was given for, that it was not given to secure him against such indorsement, and therefore evidence of the existence of an indebtedness from I. to F. upon an open account was receivable to support the proof that it was given to secure such indebtedness.

I. was asked whether F. did not say to him when he asked him to indorse one of the series of note, of which the one in question was a renewal, that he, F., never backed anybody's note.

Held, that this question was irrevelant, and I's answer to it conclusive, and evidence contradicting such answer was inadmissible.

Held, also, that, having regard to the whole case and the charge of the trial, judge adverting to evidence improperly received and to its importance, substantial injury and miscarriage were thereby occasioned, and there was sufficient ground for granting a new trial.

McCarthy, Q.C., for the plaintiff.

Lount, Q.C., for the defendant, F.

Chancery Division.

Div'l Ct.] [Sept. 22, 1888.

HUGHES *v.* ROSE *et al.*

Mortgagor and mortgagee—Power of sale—Notice of sale—Effect of second mortgage taken as collateral to first.

A, being a mortgagee from B, made him a further advance and took a second mortgage for the amount of both advances and as collateral to the first.

Held, that the remedies under the first mortgage were not surrendered, and that a sale under notice given under the first mortgage was a good sale.

The notice of sale was a double one: (1) "That the mortgagee would without further notice, enter into possession and sell and dispose of the lands," and (2) "That the sale would take place on 28th January." The latter became inoperative because service was not made two months (the required time) prior to that date. A sale was subsequently had two months after the notice, which was not complained of as being otherwise improper or improvident.

Held, a good sale.

The plaintiff appeared in person.

Moss, Q.C., *Delamere*, *Shepley*, *J. B. Clarke*, *C. H. Smith*, *J. M. Clarke*, *Dean* and *Campbell*, for defendants *contra*.