

land was his own, so as to entitle him to such lien.

Snelling, for the plaintiff.

McMichael, Q.C., for the defendant.

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DENMARK v. McCONAGHY.

Case commenced with jury—Right to continue without jury—Title by possession—Evidence of—Trespass.

Where the trial of a cause begins and is entered into with or without a jury, it must be finished in that manner, unless the change in that mode of trial is made by consent of parties.

In an action of trespass to land, in which the plaintiff claimed, under the paper title, and the defendant by possession, after the trial of the case had been entered into with a jury, the learned Judge ordered the jury to be discharged, and then tried the case without a jury; and the counsel for the parties, though objecting to the change, continued to act without further objection.

Held, that the learned Judge had no authority to discharge the jury, but that by the counsel continuing to act in the case, the objection had been waived.

On the merits, the verdict was entered for the defendants, the Court being of opinion that the possessory title had been proved.

Robinson, Q.C., for the plaintiff.

Ferguson, Q.C., for the defendants.

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TUFFTS v. MOTTASHED.

Goods—Property passing—Replevin.

T. delivered certain articles to C. on the terms of a special contract contained in four notes signed by C., which were similar in form and as follows: "For value received, November 1, 1877, after date, we promise to pay to the order of T. \$81.67. The consideration of this and the other notes is one artic apparatus, &c., which we have received of said T. Nevertheless, it is understood and agreed between us and T. that the title to the above mentioned property does not pass to us, and that until all such notes are paid the title to the aforesaid property shall remain in said T., who shall have the right

in case of nonpayment at maturity, of either of said notes without process of law, to enter and retake and may re-enter and retake immediate possession of the said property wherever it may be, and resume the same. Payable at the Bank of Montreal here, &c." It appeared that C., without payment of the notes, sold the articles to the defendant, who was not aware when he bought that T. had any claim on them, but, on subsequently discovering it, offered to make a new bargain with T., but none was made. There was no demand and refusal of the articles. T. brought replevin, to which the defendant pleaded, (1) *non cepit*, and (2) that the goods were the defendant's and not the plaintiff's.

Held, that there must be a verdict for the defendant on the first issue, for that the goods came lawfully into the defendant's possession, so that without a demand and refusal trespass and trover would not lie, and, therefore, replevin; but that the plaintiff was entitled to a verdict on the second issue, as under the terms of the notes, the property in the articles was in the plaintiff.

Dougall (of Belleville), for the plaintiff.

Burdett, for the defendant.

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CONSOLIDATED BANK v. HENDERSON.

Husband and wife—Note made by wife to husband—Endorsement by husband to plaintiffs for value—Liability of wife's separate estate.

A married woman, married after 2nd March, 1872, made a promissory note to her husband for his accommodation, which the husband endorsed for value to the plaintiffs. It was admitted that the wife had separate estate, and that she made the contract in reference thereto.

Held, that the plaintiffs were entitled to recover judgment against such separate estate.

Semble, per *WILSON*, C. J., that the judgment is not limited to the separate estate, but may be recovered against the married woman personally.

R. Martin, Q.C., for the plaintiffs.

Mackelcan, Q.C., for the defendant.