

MARKS v. CORPORATION OF WINDSOR.

Jury—Dispensing with after evidence taken.

The judge at the trial of an action has the power to dispense with the jury after all the evidence has been taken, but the power should be sparingly exercised.

Aytoun Findlay for plaintiff.

W. R. Meredith, Q.C., for defendant.

KEARNS v. TENNANT.

Partnership—Continuing deceased partner's share in business—Evidence of—Debt due deceased partner's estate.

K., a partner in a firm, by his will made in 1884, appointed plaintiff executor and trustee, and after a general bequest to plaintiff to hold all his real and personal estate in trust, directed him within six months after his death to ascertain the proper amount due his estate for his share in the firm's business, and when ascertained to allow the same to remain in the business with interest at six per cent., and to pay such interest to his wife during her life; but if he deemed it advisable to do so to withdraw said share from the business in the proportion of twenty per cent. annua y from the time said amount was ascertained, and to invest said sums so withdrawn and to pay the interest thereon to his wife for life. The evidence showed that after the share was ascertained it was not continued in the business for the purpose mentioned in the will, but was treated and made a debt to K.'s estate.

Held, that under the circumstances, the plaintiff, as executor of K.'s estate, was not as to K.'s share, "in the position of a partner in the firm.

The firm in question was from 1860 to 1862 composed of K. and R., when T. was taken into the firm, the firm thus constituted to continue so long as deemed advisable for the mutual benefit. In 1871 K. and R. insured their joint lives for \$10,000, to be paid to the survivor. In 1876 R. assigned his interest to K., and in 1884 K. assigned same as collateral security to a person who had endorsed for the firm. On K.'s death the insurance company paid the insurance money to the holder of the policy, who handed the amount to T., who retired the notes there-with.

Held, that the plaintiff was entitled to recover the amount as a debt due to K.'s estate.

Osler, Q.C., and *MacCracken* Q.C., for plaintiff.

Snow and *A. Cassels* for defendant.

Div'l Ct.]

JONES v. GRACE.

Justice of the peace—Backing warrant of commitment in adjoining county—Illegality—Joint trespass—Damages—Constable executing—Liability of—24 Geo. II., c. 24—Notice of action—Interpretation Act.

The plaintiff, who resided in the County of H., was convicted before defendant G., a police magistrate for the County of B., for giving intoxicating liquor to an Indian, and fined, with committal to the county goal of B. on non-payment of the fine. The fine not having been paid, G. issued a warrant of commitment directed to all the peace officers of B. to arrest plaintiff, and prepared a form of endorsement to be signed by a Justice of the Peace of H. County, authorizing the defendant N., a constable, to arrest the plaintiff in H. G. handed the warrant to N., telling him plaintiff lived in H. and he would have to get the warrant endorsed. N. took it to R., a Justice of the Peace for H., who signed the endorsement, and plaintiff was arrested by N. and taken first before G. in B. to see if he would accept a note in payment, and then to the county jail of B. The plaintiff was afterwards discharged on *habeas corpus*, but the conviction was not quashed.

Held (Galt, J., dissenting), that the action was maintainable against the defendants G. and R.; that there was no power enabling R. to back the warrant, and that he was guilty of trespass in so doing, and that G. was liable as a joint trespasser, for by his interference he was responsible not only for the arrest but for the subsequent detention in the jail at B.

At the trial the jury found that plaintiff had sustained no damage as against R., and they assessed the damages solely against G. Judgment was thereupon entered as against G., and the action dismissed as to R.

Held, that the finding of the jury as to the damages was in law permissible, but, if R. should have been held liable, as plaintiff at most could only have a new trial or elect to retain his judgment as against G. alone, the Court would not interfere with the finding.

Quare. Whether the constable N. was protected under 24 Geo. II., c. 24?