not be allowed to complain of the abandonment by the company of proceedings to compel him to sell his land to them, when he had notified them at every opportunity that he intended to contest their right to compel him to do so; after they had acted upon his expressed intention, and abandoned the notice to which he objected, it was too late for him to endeavour to insist upon its validity.

Grierson v. *Cheshire Lines Committee*, L. R. 19 Eq. 83, referred to.

Wm. Macdonald, for the landowner.

Lash, Q.C., for the railway company.

MacMahon, J.] [Feb. 10, 1888.

HEDDLESTONE *v.* HEDDLESTONE.

Devise of land—Restraint on alienation—Invalidity of devise.

Testator devised as follows: "I also will that that portion of the within mentioned lands, which I have hereby bequeathed to my son William, to my son Robert, and to my son James, shall not be disposed of by them, either by sale, by mortgage, or otherwise except by will to their lawful heirs."

Held, invalid, and that the plaintiff, one of the devisees, was entitled to hold the land freed from the restriction above mentioned.

A. H. Marsh, for plaintiff.

J. Hoskin, Q.C., for infants.

Street, J.] Feb. 10, 1888.

REGINA *v.* GREEN.

Criminal law—Conviction for selling intoxicating liquor to an Indian—Variance as to date between evidence and conviction—R. S. C. c. 43, s. 87—Findings of magistrate, when reviewable.

A summary conviction by the police magistrate of the county of Brant for selling intoxicating liquor to an Indian in the township of Tuscarora, contrary to R. S. C. c. 43, stated that the offence was committed on the 29th September, 1887, but the information stated and the evidence disclosed that the offence was committed on the 27th September, 1887.

Held, that the date was not under the circumstances material, there being no suggestion that any wrong or injustice was caused by the mistake, and that s. 87 of R. S. C. c. 43, operated to cure this irregularity, as also certain other irregularities complained of, the offence having been clearly proved, the police magistrate having express jurisdiction by s. 96 of the Act, and the punishment imposed being within the power conferred upon him.

Held, also that where the proceedings before a magistrate are removed under 29 and 30 Vict. c. 45, s. 5, the judge is not to sit as a court of appeal from the findings of the magistrate upon the evidence; if any fact found by the magistrate is disputed, and he would have no jurisdiction had he not found that fact, then the evidence may be looked at to see whether there was anything to support his finding upon it; but if the jurisdiction to try the offence charged does not come in question as a part of the evidence, then the jurisdiction having attached, his finding is not reviewable as a rule except upon an appeal.

Mackenzie, Q.C., for the defendant.

Aylesworth, for the magistrate.

COUNTY COURT.

Peterborough.] [Feb. 14, 1888.

O'SULLIVAN *v.* BELLEGHEM.

Time—Computation—"Till."

The defendant obtained an order giving him till the 20th instant to file his statement of defence. The plaintiff on that day entered a note, under Rule 596, closing the pleadings against the defendant as in default of defence

L. M. Hayes moved to set aside the note citing *Dakins* v. *Wagner*, 3 Dowl. 535; *Kerr* v. *Jeston*, 1 Dowl. 538, N.S.; *Isaacs* v. *Royal Ins. Co.*, 5 Ex. 296; *McDonald* v. *McEwen*, 6 P. R. 18.

J. O'Meara contra.

WELLER, Co. J.—I am of the opinion that, in an order of the kind made by me, the word "till" (without some word, for example, "exclusive,") means inclusive of the day to which it is prefixed. Therefore the plaintiff was wrong in causing the pleadings to be noted closed on that day. The plaintiff, having taken the chance of being strictly correct, should pay the defendant's costs of the motion.