

Q. B.]

NOTES OF CASES.

[Q. B.]

Re MACE v. COUNTY OF FRONTENAC.

Temperance Act of 1864—Insufficient notice of polling.

Held, that the requirements of sec. 37 of the Temperance Act of 1864 as to giving notice of intended polling under this Act are imperative. Where, therefore, in several townships in a county the notices had been posted up too short a time, and in other townships the posting had been irregular, and where it was clear that but for these irregularities the result of the voting might have been different.

Held, that the by-law was invalid, and must be quashed.

Bethune, Q.C., for the applicant.

J. K. Kerr, Q.C., contra.

REGINA v. SUTTON.

Conviction—37 Vict. ch. 32, sec. 25—Joint Penalty.

A police magistrate having (1) convicted two persons jointly for an offence under 37 Vict. ch. 32, sec. 25, and (2) imposed a joint penalty upon them. *Held*, that the conviction was void for both reasons. *Held*, not a proper case for amendment.

J. G. Scott, Q.C., for the Crown.

Osler, for the defendant.

TYLEE v. HINTON.

Covenant—Mortgage—Payment of instalment—Staying proceedings.

Where in an action on a covenant in a mortgage, the defendant paid into Court the instalment then due, and interest and costs, and applied to stay proceedings, relying on Consol. Order 46 of the Court of Chancery, and under the general jurisdiction of that Court to relieve against a penalty,

Held (Wilson, J., dissenting), that Order 461 applied. Per Wilson, J., that the order applied only to foreclosure suits, and not to other actions in respect of the mortgage.

S. Richards, Q.C., for plaintiff.

Beaty, Q. C., for defendant.

STEINHOFF v. ROYAL CANADIAN INS. CO.

Marine Ins. Co.—“Barge,”—Average.

The policy was on the ship or steam-barge W. S. Ireland. It contained the following words: “This policy warranted by the assured to be free from any contribution for loss by jettison of property laden on deck of any sail vessel or barge.”

Held, that the vessel in question was not a barge within the meaning of the policy.

Deck loads on such vessels are subject of a general average.

General average discussed.

Atkinson, for plaintiff.

Robinson, Q. C., contra.

HAGARTY v. SQUIER.

Bills and Notes—Maker of note.

Plaintiff having settled with defendant the amount of a claim which plaintiff had on a policy in an Insurance Company of which the defendant was inspector, and which Company had since become insolvent, took from defendant a note for the amount of the claim, signed by defendant, he adding after his signature the word “Inspector.”

Held that defendant was personally liable on the note to the plaintiff.

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

Huson W. Murray, contra.

ULRICH v. NATIONAL INS. CO.

Fire Insurance—Company incorporated by Dominion Legislature—How far bound by 39 Vict. ch. 24, O.

The defendants are incorporated by 38 Vict., ch. 84, and by sec. 2 they can make contracts of insurance with any person, &c., &c., and “upon such conditions as may be bargained and agreed upon or set forth by and between the Company and the insured.” The Act also apparently incorporated the Company for other than provincial purposes. The eighth plea set up the failure of the plaintiff to comply with two conditions endorsed on the policy, (1) that all differences including liability should be settled by arbitration, &c., and (2) that no action, &c., should be brought till the amount of liability should be settled by arbitration. The replication to this plea set out that the policy was entered into and in force in Ontario after the 1st July, 1876, and as to property therein only, and that the conditions in the 8th plea were not in conformity with 39 Vict., ch. 24, O., nor were they in different coloured ink, and in conspicuous type, &c., &c., as required by that statute. There was also a demurrer to the 8th plea. A verdict was rendered for the plaintiff.

The defendants' contention was, that being incorporated under an Act of the Dominion legislature they were not bound by the Ontario Act referred to, though doing business in Ontario, and even if so bound there, can avail