

# AT OSGOODE HALL

## MORRISBURG OBTAINS JUDGMENT FOR FORFEITURE OF SHARKEY LEASE.

### Rudolph Beranek, Man Arrested on Island and Interned, Falls to Obtain Release on Application Under Writ of Habeas Corpus.

#### ANNOUNCEMENTS.

Judges' Chambers will be held on Friday, January 29, at 11 a.m.

Peremptory list for Second Divisional Court for Friday, January 29, at 11 a.m.:-

1, Cook v. Deeks (to be continued).

Pullen v. Moster.—G. T. Walsh, for plaintiff, moved to amend writ and other proceedings. E. P. Brown for defendant. Order allowing amendment as asked. Costs in the cause.

Morgan v. The Emmett Co.—Calvin (Beatty & Co.), for defendant, obtained order on consent dismissing action without costs.

Stunna v. Scandiflo.—Calvin (Beatty & Co.), for plaintiff, obtained order for issue of writ of summons for service in Brooklyn, N.Y., and for substitutional service of same. Time for appearance limited to fifteen days. Costs in cause.

Colonial Coal Co. v. Bredin; Colonial Coal Co. v. Du Vernet.—J. H. Spence, for defendants, moved for particulars of statement of claim. J. G. Smith for plaintiff. Enlarged at request of defendants to 1st February.

Krug Bros. v. Tittensor & Son.—E. Smiley, for plaintiff, obtained order on consent dismissing action without costs.

#### MASTER'S CHAMBERS.

Before J. A. C. Cameron, Master.

Albert v. Wendigo Crater Mines.—Jackson (Ryckman & Co.), for plaintiff, obtained order on consent amending writ of summons.

Foxwell v. Silverman.—Gilliam (Skeans & McR.), for plaintiff, obtained order for substitutional service of statement of claim in mechanics lien action.

Cowlin v. Maclean.—W. H. Cliphsham, for defendant, moved to set aside judgment on default of appearance. S. Denison, K.C., for plaintiff. Enlarged until January 29 to allow affidavit of merit to be filed.

Winniffrith v. Finkleman.—Christelaw (McCarthy & Co.), for plaintiff, moved to make attaching order absolute. E. F. Singer for garnishee. Enlarged to February 4.

Jacobs v. The Glass Co.—H. S. White, for defendant, moved to strike out statement of claim for irregularity. D. O. Cameron for plaintiff. Order made validating statement of claim. Defendant to have eight days to file defence. Costs to defendant in any event.

Daniel v. Sharpe.—W. H. Bourdon, for plaintiff, obtained order for amendment of judgment and writ of execution.

Grant v. McCutcheon.—E. F. Macdonald, for plaintiff, moved for commission to take evidence for plaintiff at Winnipeg. F. Aylesworth for defendant, Brockville Investment Co. R. G. Dyke for defendant. McCutcheon Bros. and McCutcheon Bros. Limited. Enlarged until February 8.

#### JUDGES' CHAMBERS.

Before Britton, J.

Naiman v. Wilson.—J. J. Gray, for defendants, appealed from order of Master in Chambers of 18th January, 1915, awarding judgment to plaintiff for amount claimed. G. M. Willsoughby for plaintiff.

Judgment: A careful reading of the examination of some of the parties and other papers filed satisfies me that this is not a case either upon the law or of facts for summary judgment. Appeal allowed, and order of Master in Chambers set aside, and the case must go to trial. Costs in the cause.

Before Meredith, C.J.

Re Rudolph Beranek, a Military Prisoner.—W. A. Henderson, for prisoner, an Austrian, but alleged to be a naturalized British subject, arrested on Toronto Island and interned, moved on return of writ of habeas corpus for his discharge.

Judgment: In extraordinary times extraordinary laws have been passed for the security, defence, peace, order and welfare of Canada, and the power of the military authorities, and the rights of the prisoner depend upon those laws, and that which has been rightly done under them.

Under the 11th section of the law measures act, no person who is under arrest or detention as an alien enemy, or upon suspicion that he is an alien enemy, shall be released upon bail or otherwise discharged or tried without the consent of the Minister of Justice.

Upon the man's own statement, a strong suspicion was caused in my mind that he would not have been wrongly arrested if he could have been and had been arrested for spying out the land, though probably not in connection with any organized system, but only on his own account, to be made use of should there be opportunity.

In these circumstances, and having regard to the fact that under one of the orders of the Governor in Council, made under the war measures act, 1914, the family of the prisoner may go with him, I cannot perceive any justification for these proceedings, without first applying to the Minister of Justice, even if there had been some power here to deal with the case in the first instance. These observations do not, of course, affect the prisoner's rights; if he be a British subject he ought not to be detained as an alien enemy, whatever other charge might be laid against him, but all that is for the consideration of the Minister of Justice first. The application for the prisoner's discharge is dismissed, and his conditional remand is made absolute.

#### SINGLE COURT.

Before Britton, J.

Re Solicitor.—A. A. Miller, for the Law Society, on motion to suspend, obtained a week's enlargement.

Re Puley Trusts.—D. B. Simpson, K.C., for executors of will of William Puley, moved for order construing said will. R. J. McLaughlin, K.C., for all the children of Mary Williams and Betsy James (22 in number). W. D. McPherson, K.C., for seven representatives of Mary Ann Piper. A. J. Armstrong (Cobourg) for nine members of Puley family. F. W. Harcourt, K.C., for five infants. J. Douglas for seven members of Piper family. Reserved.

Re Sanderson Estate.—F. C. S. Snider, for National Trust Co., trustees of will of Thomas Sanderson, moved for order construing said will. W. D. McPherson, K.C., for the family. F. W. Harcourt, K.C., for infants. Enlarged until February 1 next.

Walsh v. Mulligan.—R. W. Hart, for plaintiff, moved for judgment for foreclosure. No one contra. Judgment for plaintiff for foreclosure with costs.

Trenton v. Canadian Northern Ontario Ry. Co.—J. H. Fraser for plaintiff. A. J. Reid, K.C., for defendants. A settlement of matters in question between the parties having been reached by consent, action dismissed and injunction dissolved. Costs to plaintiff.

Re Moncur and McInnes; Re Moncur and Weldon; Re Moncur and Petty; Re Moncur and Moyer.—J. E. Jones for McInnes. W. M. Brandon (Hamilton) for Weldon. C. V. Lange (Hamilton) for Petty. J. Marshall (Hamilton) for Moyer. T. B. MacQueen (Hamilton) for liquidator of Nagrella Co. Appeals by four above named from report of local Judge at Hamilton placing them on the list of contributories. Reserved.

Myers v. Teller.—J. M. Godfrey, for plaintiff, moved for judgment. L. F. Heyd, K.C., for defendant. Not reached and enlarged to February 1.

Re Olstein and Titelbaum.—J. C. McFuer for vendor on motion under vendors and purchasers act. G. T. Walsh for purchaser. Not reached and enlarged until February 1.

Re Clarkson and Bastedo.—W. A. Lamport for vendor on motion under V. and P. act. J. C. M. MacBeth for purchaser. Not reached and enlarged until February 1.

Re Beatty and Brown.—E. C. Ironside for vendor on motion under V. and P. act. J. E. Jones for purchaser. Not reached and enlarged until February 1.

McGillivray v. O'Toole.—G. H. Watson, K.C., for defendant. G. F. Henderson, K.C., for plaintiff. Appeal by defendant from and to set aside and recind report of Local Master at Ottawa on January 13, 1915, wherein he made his finding that the parties are not entitled by law to any allowance in respect of the plant of each used for the purposes of the partnership. Reserved.

#### TRIAL COURT.

Before Falconbridge, C.J.

Village of Morrisburg v. Sharkey.—W. B. Lawson, K.C., for plaintiff. I. Hilliard, K.C., for defendant. Action for declaration that defendant, etc., have committed a breach of his covenants to pay rent, taxes and debenture of village, etc., in respect of power plant.

Judgment: (1) I find that defendant and his assigns have neglected and refused to furnish the security required under the agreement. (2) I find that defendant Sharkey was not entitled to assign or sublet the power plant and Government lease of water power with the premises, etc., to the Rapid Power Company, and that, by reason of his assignment to them, defendant Sharkey has forfeited his rights under plaintiff's by-law 354, and lease or agreement made pursuant thereto. (3) Judgment for plaintiff for possession of water power plant and premises, etc. (4) Plaintiff to have costs of action. The counter-claim succeeds only as to the paragraph 17a mentioned, and there will be no costs of counter-claim. I allow defendant to amend by adding paragraph 17a to his statement of defence. . . . All the accounts between plaintiff and defendants for rent and otherwise will have to be the subject of a reference to the Master at Cornwall. I give plaintiff leave to amend, if so advised, by claiming alternatively for damages instead of rent. Further directions and subsequent costs reserved. Fifteen days' stay.

#### APPELLATE DIVISION.

Before Falconbridge, C.J.; Hodgins, J.A.; Latchford, J.; Kelly, J.

Cook v. Deeks.—W. Nesbitt, K.C., and A. M. Stewart for plaintiff. E. F. Johnston, K.C., and R. McKay, K.C., for defendant.

Appeal by plaintiff from judgment of Middleton, J., of June 16, 1914.

Argument of appeal resumed from yesterday, but not concluded.