

statutory conditions, which was not binding, not being printed in the required mode.

In the result the judgment of the Queen's Bench Division, 25 O.R. 100, in favour of the insured, was affirmed.

*Aylesworth*, Q.C., for the appellants.

*E. R. Cameron* for the respondent.

[Jan. 15.]

COMMISSIONERS OF QUEEN VICTORIA NIAGARA FALLS PARK *v.* COLT.

*Improvements under mistake of title—Compensation—Occupation—Rent—Crown—R.S.O., c. 100, s. 30.*

The defendants, being the owners of land adjoining the bank of the Niagara River, built at great expense stairways and elevators, and made paths from the top of the bank to the water's edge of the river to enable visitors to descend to see the view, and large sums were received for the use of these facilities. Expensive repairs to the stairways, elevators, and paths were from time to time necessary, owing to their exposed position, and the defendants knew that they had no title to the bank, which was vested in the Crown ;

*Held*, that works of this kind were not lasting improvements within the meaning of section 32 of R.S.O., c. 100, and that both on this ground and on the ground that the defendants knew they had no title the defendants could not recover compensation.

*Scmble* : The section would not affect the Crown, and the title being in the Crown when the improvements were made the Crown's grantee would take the land free from any lien.

In cases coming within the section the amount by which the value of the land has been enhanced is to be allowed, and the cost or value of the improvements is not the test.

*Held*, also, that the defendants were not chargeable with the profits made by them, but only with a fair occupation rent for the land.

Judgment of STREET, J., varied.

*Oster*, Q.C., and *K. H. Cameron* for the appellants.

*Moss*, Q.C., and *W. Barwick* for the respondents.

[Jan. 15.]

TRUMBLE *v.* HORTIN.

*Evidence—Discovery of new evidence—New trial—Discretion—Appeal.*

Allowing a new trial on the ground of the discovery of new evidence is a matter of legal discretion, and in a case where a Divisional Court ordered a new trial on the ground of the discovery of new evidence, and this new evidence was merely corroborative of the evidence at the trial, the order was set aside.

Judgment of the Common Pleas Division reversed.

*E. D. Armour*, Q.C., and *A. H. Clarke* for the appellant.

*W. R. Riddell* and *H. E. Rose* for the respondent.