

McInnes v. Egremont, 5 O.L.R. 715; *Keen v. Millwall Dock Co.*, L.R. 8 Q.B.D. 482, and *Christie v. St. John*, 21 S.C.R. 7, distinguished on the ground that the statutes under which they were decided differed from the above statute.

(2) Plaintiff's injuries having resulted much more seriously after the notice was given than she anticipated, she was not precluded by the terms of the notice from claiming and recovering in the action a larger amount than that mentioned in the notice.

Verdict in plaintiff's favour for \$3,000 damages.

Robson and Coyne, for plaintiff. *I. Campbell, K.C.*, and *Hunt*, for defendants.

Full Court.]

BENNETT v. GILMOUR.

[June 25.

Practice—Amendment—Transfer of land under Real Property Act does not work an estoppel—Parties to action.

Appeal from order of *Perdue, J.*, refusing to allow certain amendments to the statement of claim asked for by the plaintiffs.

By that statement the plaintiffs claimed the land in question under a transfer from one *James Gardiner*, not a party to the action, who was the registered owner by a certificate of title issued under the Real Property Act, and alleged that, after the delivery of the transfer to them and before its registration, the defendant *Gilmour* registered a caveat against the land, claiming that the said *Gardiner* was a trustee for him for an undivided one-third interest therein, that after the filing of such caveat the defendant *Gilmour* sold his said interest to *Gardiner*, and that the plaintiffs, as transferees from *Gardiner*, were entitled to the fee simple in said land free from any claim of *Gilmour*, and they asked that this said caveat and claim of *Gilmour* might be declared to be a cloud on their title.

The plaintiffs sought to amend by setting up that, pursuant to the sale to *Gardiner* by *Gilmour* of his one-third interest, *Gardiner* paid money and gave securities to *Gilmour* for the purchase price and that *Gilmour* had realized money on such securities, and had parted or otherwise dealt with them, and by asking, as alternative relief, that they might be declared entitled to stand in the position of *Gardiner* towards *Gilmour* and that an account might be taken as between *Gardiner* and *Gilmour*,