

C. P. Div.]

NOTES OF CANADIAN CASES.

[Prac.]

Rose, J.]

QUILINAN V. CANADA SOUTHERN RY. CO.

Pleading—Allegation—That work "negligently" done—Particulars—Mandamus—Compensation.

The plaintiff by this statement of claim, claimed damages from defendant for "unlawfully, negligently and wrongfully" depressing certain streets in the town of Niagara Falls, and thereby making it inconvenient and almost impossible for persons to approach the plaintiff's store for business; also for "negligently, unlawfully and wrongfully" blocking up and rendering almost impassable the same street in the neighbourhood of the plaintiff's store, and thereby "negligently, unlawfully and wrongfully" preventing customers or other persons coming to the plaintiff's store, and almost entirely destroying plaintiff's business. And statement of claim further claimed, if the depressing or blocking up should be found to be lawful, that a mandamus should be granted requiring defendant to proceed to arbitrate to ascertain the compensation payable to plaintiff; or that it be referred to the proper officer to ascertain and state such compensation.

Held, on demurrer that the statement of claim was sufficient; that it is alleged that the work was negligently done, and this gives a cause of action, even though the work itself be lawful; and that if fuller particulars be required of the acts complained, this should be by motion.

Quære, whether a mandamus would be granted, for if the plaintiff was entitled to compensation, the proper remedy would apparently be by reference to the proper officer, as asked by way of alternative relief; also, whether it is necessary to allege that defendant's railway touches or takes a portion of the plaintiff's land; and, also, whether under the Railway Acts, defendants are only liable to make compensation for lands taken. As to these latter points, as the learned judge's judgment could not be reviewed until after the case would come on for trial, these objections were enlarged before the judge at the trial.

Lash, Q.C., for the plaintiff.

N. Kingsmill, for the defendant.

Rose, J.]

[June 27.]

FEDERAL BANK V. HOPE.

Motion for immediate payment—Promissory note—Agreement to renew.

On the making of a promissory note it was agreed that the note should be renewed on payment of a named sum, "if the renewal notes are continued in the same form or names as at present." Since the making of the note the maker had died. In an action on the note the defendant set up as a defence such agreement, and alleged that he duly offered to perform the agreement so far as lay within his power by leaving the said note and liability of the maker and giving his own note in renewal as agreed as collateral to the said note, which tender the plaintiff refused to accept, and which the defendant is at all times ready and willing to carry out.

A motion for an order for immediate judgment under Rule 324 was dismissed, the judge refusing to decide as to the legality of the defence on such motion.

Cattanach, for the plaintiffs.

Nesbitt, contra.

PRACTICE.

The Master in Chambers.]

[June 17.]

MOORE V. MOORE.

Alimony—Costs—32 Vict. (O.) c. 18, sec. 2.

An application to compel the defendant to pay the costs of the plaintiff's solicitors of an action for alimony.

The action was settled before trial, the plaintiff returning to live with the defendant, and the defendant agreeing to pay the plaintiff's solicitors' costs.

Held, that before the Act 32 Vict. (O.) c. 18, the defendant would have been liable to pay costs.

Held, under the wording of sec. 2 of the above Act, that the plaintiff had not failed to obtain a decree for alimony, and that the defendant is, therefore, liable to pay costs.

Hoyles, for the application.

H. Cassels, contra.