NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

COURT OF APPEAL.

From C. P.] [March 24.

BASSWELL v SUTHERLAND.

Bond for delivery of chattels—Performance excused by destruction of property.

To an action on bond conditioned for the production of certain goods in default of payment by P. of certain moneys advanced by the plaintiff to him, and for securing which the plaintiff had obtained a chattel mortgage on the goods, the defendant pleaded that before the time for payment, and before the date specified in the bond for producing the goods, and before any breach of condition, the goods were accidentally destroyed by fire without any default of defendant, and the goods were not in existence when the plaintiff became entitled to their production.

Held, bad on demurrer for not negativing default on the part of P. as to the destruction by fire of the property.

Per SPRAGGE, C. J. O.—The accidental destruction of the goods without default of the defendant or his principal, would excuse the performance of the contract.

The judgment of the Court of Common Pleas overruled the demurrer on the assumption that the pleas had been amended by negativing default by P., but the appeal books not showing the amount to have been made the defence appearing thereon was considered bad on demurrer, and the appeal was allowed.

McCarthy, Q.C., and *Eddis*, for the appeal.
McPhillips, contra.

From C. P.] [March 24.

HOWARTH v. SUGAR MANUFACTURING CO.

Incorporated company—Hiring by the year—Improper dismissal.

The defendants, a foreign corporation, elected directors to whom was delegated power to appoint such subordinates as might be necessary to carry on the business of the company. By power of attorney under the corporate seal of the defendants they appointed one H. their general agent at Toronto, to take charge of the general management of their business there, and also giving him the management and control of the sub-agencies generally, and giving H. power to do everything necessary and requisite therefor as fully, to all intents, as the company could do if present. H. appointed the plaintiff a sub-agent for one year, which was renewed for some years at the end of each year. The letter appointing the plaintiff stated that he was appointed for a year, to be paid weekly the sum of $15, together with certain commissions. During the currency of the years the plaintiff was summarily dismissed, and in an action for wages the defendants gave evidence to show that they were in the habit of engaging their agents and sub-agents at will only.

Held, affirming the judgment of the Court of Common Pleas, [SPRAGGE, C. J. O., dissenting], that the appointment from year to year was within the power of the directors which were delegated to H., their general agent, and that the plaintiff was entitled to rely upon such powers when he entered into the service of the company.

Per SPRAGGE, C.J.O.—Notwithstanding the knowledge of the defendants and their recognition, year after year, of the employment of the plaintiff, there was not any acquiescence in the terms of the engagement; and as it was shown that the practice of the defendants was to engage their employees at will only, the power of attorney, if it gave power to appoint sub-agents like the plaintiff, no power was given them to appoint for a year; and H. was not held out by the defendant company as having such authority.

Watson, for appellants.
C. Robinson, Q.C., contra.

QUEEN'S BENCH DIVISION.

[March 10.

MACDONALD ET AL. v. CROMBIE ET AL.

Interpleader—Judgment on non-appearance—Immediate execution—Irregularity—Referential Judgment—Sheriff's sale—Purchase by judgment creditor—R. S. O. ch. 118.

An execution issued on the same day that a judgment on default of appearance is signed, contrary to Order IX. Rule 4, is an irregularity only, and not a nullity.