

Sup. Ct.]

NOTES OF CANADIAN CASES.

[Sup. Ct.]

## NEILL V. THE TRAVELLERS' INSURANCE CO.

*Policy—Condition—Voluntary exposure to unnecessary danger.*

The plaintiff (appellant) brought an action to recover upon a policy of insurance effected by the respondents upon the life of her deceased husband, J. N., who met his death during the currency of the policy from being run over by a train of cars upon one of the lines of the Northern Railway through the company's yard at Toronto. In answer to the plaintiff's claim the respondents set up the following amongst other defences:—

By their fourth plea, they invoked a condition to which the policy sued on was subject, to wit: "no claim shall be made under this policy when the death or injury may have happened in consequence of voluntary exposure to unnecessary danger, hazard or perilous adventure." The uncontradicted evidence was that the deceased was killed by the train coming against the vehicle in which he was driving alone on a dark night in what was called a network of railway tracks in the company's station yard at Toronto at a place where there was no roadway for carriages.

*Held* (affirming the judgment of the Court below, 7 App. R. 670), that the undisputed facts established by the plaintiff shewed "that the deceased came to his death in consequence of voluntary exposure to unnecessary danger," and that, therefore, respondents were entitled to a non-suit.

*Lash, Q.C.*, for appellant.

*Robinson, Q.C.*, and *D. McCarthy, Q.C.*, for respondents.

## STAMMERS V. O'DONOHUE.

*Vendor and purchaser—Specific performance—Contract—Vendor's name.*

This was an appeal from a judgment of the Court of Appeal for Ontario, confirming a decree of the Court of Chancery, ordering specific performance of a contract of sale alleged to have been entered into between the parties under the circumstances stated in the report of the case (28 Gr. 207).

*Held*, that although the vendor's name was not mentioned in the agreement signed by the auctioneer, the subsequent letters of the vendor

and his admissions were sufficient to constitute a complete and perfect contract between the appellant as vendor and respondent as purchaser within the statute of frauds.

*O'Donohue, Q.C.*, appellant in person.

*Bain, Q.C.*, for respondent.

Manitoba.]

## SINNOTT V. SCOBLE ET AL.

*Permits to cut timber (Man)—Rights of holders of—Dominion Lands Act, 1879, sec. 52.*

On the 21st November, 1881, *S. et al.*, obtained a permit from the Crown Timber Agent, Manitoba, "to cut, take and have for their own use from that part of Range 10 E., that extended five miles north and five miles south of the Canadian Pacific Railway track, the following quantities of timber: 2,000 cords of wood, 35,000 ties—permit to expire on May 1st, 1882." A similar permit was granted to *M. Sinnott & Co.*, dated 10th February, 1882, authorizing the cutting, removing, etc., of 25,000 ties. In February, 1882, under leave granted by an order in Council of 27th October, 1881, *S., D. & T.* cut timber for the purposes of the construction of the C. P. R. from the lands covered by the permit of 21st November, 1881. *S. et al.*, by their bill of complaint, claimed to be entitled by their "permit" to the sole right of cutting timber on said lands until the first of May, 1882, and prayed that the defendants, *S. D. & T.*, be restrained by injunction from cutting timber on said lands, and be ordered to account for the value of the timber cut. *S. D. & T.* justified their acts under the order in Council of 27th October, 1881, and denied the exclusive possession or title to the lands or standing timber.

*Held* (affirming the judgment of the Court below), that the holders of "a permit" as the one question are not, during its currency, vested with any enforcing power, or rights to the possession of the lands or the standing timber, and that *S. et al.*'s permit amounted to no more than a permission or right to enter on the land and cut the quantity specified on the permit.

*McCarthy, Q.C.*, for appellants.

*H. Cameron, Q.C.*, and *Kennedy*, for respondents.