

Com. Pleas Div.]

NOTES OF CANADIAN CASES.

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amount of the note with interest was \$1,590; but that the defendant had sustained damage on the purchase by reason of the plaintiff's fraudulent representations to the above amount; and judgment was entered for the defendant. On motion to set aside such judgment,

Held, that on the evidence the finding as to the fraudulent misrepresentations was not satisfactory, and therefore plaintiff should not be delayed in his recovery on the note, and a judgment was therefore directed to be entered thereon for the plaintiff; but the Court not desiring to take case arising on the counterclaim out of the jury's hands, and decide it on the material before them, they directed a new trial.

Guthrie, Q.C., for the plaintiff.

Osler, Q.C., for the defendant.

GORING V. LONDON MUTUAL FIRE INSURANCE COMPANY.

Insurance — Title — Incumbrance — Representation — Indemnity — New trial.

Action on two policies of insurance on dwelling house, barn, etc., and contents. On the face of the policies was a provision making the applications part of the policies. By the first statutory condition if the owner misrepresented or omitted to communicate any circumstance material to be made known to the company to enable them to judge of the risk, the insurance should be void so far as respects the property misrepresented. By the fourteenth statutory condition "all fraud or false swearing in relation to any of the above particulars" vitiated the claim. The insured property had been conveyed by the plaintiff's father to the plaintiff, the consideration being natural love and affection, and was made subject to a condition requiring the son to maintain and support the father and also a brother. In the application the property was stated to be held in fee simple, and to be unincumbered and this was sworn to in the proofs of loss.

Held, that the statement as to the property was a misrepresentation merely, and its materiality was a question for the jury; and in any case the misrepresentation would only apply to the building and not to the chattel pro-

perty. The learned judge at the trial having directed a verdict to be entered for the defendants on the ground that the untrue statement of itself vitiated the policy, a new trial was ordered.

Held, also, that the fourteenth statutory condition did not apply as that only referred to the particulars contained in the twelfth condition, items *c* to *e*, which have no relation to statements as to title or encumbrances.

Osler, Q.C., for the plaintiff.

Moss, Q.C., for the defendant.

MCARTHUR V. COLLINGWOOD.

Municipal corporations — Liability for damages caused by the negligent construction of drain — Compensation under arbitration clauses.

The plaintiff sued for damages to her property because of improper and negligent construction of a drain whereby, it being of insufficient capacity to carry the water brought along it, plaintiff's land was flooded. The learned judge, before whom the case was tried, entered judgment for the defendants, holding that the case was one for arbitration under the Consolidated Municipal Act.

Held, that it was not a case within the Municipal Act, and the rule was made absolute for a new trial with costs to plaintiff in any event.

Lount, Q.C., for plaintiff.

McCarthy, Q.C., contra.

BAKER V. JACKSON.

Order to hold to bail — Judgment against bail — Amount of damages — Seduction.

An action of seduction having been brought against W., a judge's order to hold to bail was obtained for bail in the sum of \$300, and a recognizance was taken in the statutory form. A judgment was obtained against W., the defendant, in the action of seduction, for \$400 damages, and \$125 costs. In an action against the bail judgment was entered against the bail for \$525.27 and costs.

Held, CAMERON, C.J., dissenting, that the judgment must be reduced to \$425.27 and the costs of this action.

Lash, Q.C., for plaintiff.

W. Douglass, contra.