

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE
FOR ONTARIO.HIGH COURT OF JUSTICE FOR
ONTARIO.

Common Pleas Division.

Divisional Court.]

BUSH v. FRY.

Replevin—Factors' Act, R. S. O. c. 121, s. 2, 4, 5
—Agent entrusted—Sale of goods—Property passing.

Replevin—F., a music teacher at Beardstown, Illinois, wrote K. & Co., of Chicago, that he had a customer named J. to whom he could sell a piano, and desiring them to ship one in their own name to be subject to their order, but F. to pay freight charges in case of no sale, and return the piano to plaintiff, he, F., simply to act as their agent. K. & Co. not having the style of piano required, handed F.'s letter to plaintiff's piano manufacturers in Chicago, who, after communicating with F., shipped a piano to Beardstown, consequent to their own order, but to be delivered to F. on payment of the freight. The piano was delivered to F. at Beardstown, and its receipt acknowledged in a letter to plaintiff. It was then shipped by F. to Virginia City, Ill., and from there to F. at Toronto, under the assumed name of R., and was thence pledged by F., under such assumed name, with defendant D., a pawnbroker, to cover an amount loaned by D. to pay the charges as well as a further advance—F. representing that he intended opening an agency for the sale of pianos. The piano was taken by D. to his own premises where it remained until replevied.

Held, that there was no sale to F. of the piano, as it never was intended that the property should pass to him.

Held, also, that F. was not an agent within the meaning of the Factors' Act, R. S. O. c. 121, s. 2, 4, 5, so as to enable him to pledge the piano nor per ROSE, J., was he an agent entrusted.

A. Macdougall and W. Nesbitt, for the plaintiff.

Urquhart, for the defendant

Divisional Court.]

COCHRANE v. HAMILTON PROVIDENT LOAN
SOCIETY.

Ejectment—Judgment for default of defence—
Estoppel.

Action for breach of an alleged agreement made between plaintiff, as mortgagor, and defendant, as mortgagees, whereby, in consideration of the plaintiff having given defendants a chattel mortgage on certain property, defendants agreed to extend the time for payment of the mortgage for one year from the 1st of April, 1882. The defence was that on the 17th of June, 1882, the defendants brought ejectment against the present plaintiff, setting up that by said mortgage on default of payment of the mortgage moneys, the present defendants should be entitled to take possession of said lands, alleging default, and by reason thereof the present defendants claimed possession, that the present plaintiff did not plead any defence to the action, and for default of any defence; on the 30th September, judgment for possession was recovered.

Held, that the judgment so recovered estopped the present plaintiff from now maintaining this action.

J. B. Clarke and Stone, for the plaintiff.

Muir and Wallace Nesbitt, for the defendants.

Divisional Court.]

TILLY v. TILLY.

Husband and wife—Wife living apart—Husband in possession of wife's land—Recovery of possession by wife—Claim for use and occupation.

Under the O. J. Act, s. 25, ss. 2, a judge sitting elsewhere than in a Divisional Court is to decide all questions properly coming before him, and is not to reserve any case, or any point in a case, for the consideration of the Divisional Court.

On the trial of an action the pleadings were admitted to state the facts, and what was called "a special case on the pleadings" was reserved for the opinion of the judges of this court. On the case coming before the Divisional Court it was held that the special case, as such, could not be entertained; but the application was