

Q. B.]

NOTES OF CASES.

[Q. B.]

had to be unloaded. The defendant refused to give up the timber, unless, in addition to the freight, the plaintiff would pay his share for general average of (1) the expenses incurred for charges of the tug, \$1200; (2) use of hawsers, \$50; (3) use of steam pump, \$315; (4) telegrams, protest, adjustment, \$25; (5) extra help discharging, \$120.

Held, that if the vessel had been seaworthy the first, second and fifth items would not have been chargeable; and that the third might be; but

Held, also, that the evidence set out below shewed the vessel to have been unseaworthy at the commencement of and during the whole voyage, and that the expense was occasioned thereby; and that the defendant therefore had no claim.

Miller for plaintiff.

Delamere for defendant.

SINCLAIR V. CANADIAN MUTUAL FIRE INSURANCE COMPANY.

Mutual Insurance Co.—False statement as to title—Concealment of encumbrance—36 Vict. cap. 44, sec. 36, O.

The plaintiff, in his application for insurance with defendants, a mutual insurance company, answered "Yes" to the question, "Does the property to be insured belong exclusively to you?" and to the question, "If encumbered, state to what amount," he made no answer. The defendant's agent, who took the application, said the plaintiff told him there was a mortgage for \$100 on the building, which he was about to have discharged, and that he, the agent, therefore thought it unnecessary to insert it in the application, and gave no notice of it to the company. The plaintiff said the agent filled up the application, which he signed without reading it, and that he told the agent of the mortgage, but did not say that he was going to remove it.

Held, that there was no false statement as to title; and that there was no concealment as to the encumbrance, for the omission to mention it was sufficiently explained; and that the defendants, after the issue of the policy on the application, and after the fire, could not take advantage of the omission as avoiding the policy under 36 Vict., cap. 44, sec. 36, O.

Quære, whether the "false statement" or "concealment" mentioned in that section must not be fraudulent, in order to avoid the policy.

Richards, Q. C., for plaintiff.

Duff for defendant.

REGINA V. NICHOL ET AL.

[August 31.

Summary conviction—Notice of appeal—33 Vict. 27 D.

It is not essential that the notice of appeal under 33 Vict. cap. 27 D., from a summary conviction, should be signed by the party appealing. A notice, therefore, "that we, the undersigned D. N. and C. N." of, &c., following the form given by the Act in other respects, but not signed, was held sufficient.

Lount, Q. C., for the prosecution.

McCarthy, Q. C., for Nichol.

SILVERTHORNE V. LOWE.

[Oct. 17.

Covenant for title—Pleading.

A declaration on a covenant against encumbrances by defendant, his wife, or any one claiming under them, alleged as a breach that at the time of making said covenant a large sum was in arrear for taxes duly imposed, without shewing that they accrued while defendants owned the land or were caused by his acts. *Held*, bad.

J. K. Kerr, Q. C., for plaintiff.

McMichael, Q. C. for defendant.

KERR ET AL. V. STRIPP, ET AL.

[Dec. 29

Married woman—Liability of—35 Vict. cap. 16, O.

A married woman in August, 1874, gave a promissory note with her husband to the plaintiff, for money due by him, which they accepted on the representation, which was true, that she had separate estate, the only consideration being the forbearance of the husband's debt.

Held, that she was liable, under 35 Vict. cap. 16, O.

Martin, Q. C., for plaintiff.

MacMahon, Q. C., for defendant.

ANNIE M. HUTCHINSON ET AL. V. BEATTY.

Free grant territory—Sale of timber by locates—31 Vict. cap. 8, 37 Vict. cap. 23, O.

Land within the free grant territory was located on the 12th of August, 1870. On the 2nd of April, 1872, the locatee sold to defendant all the pine and other timber thereon, stipulating that ten years should be allowed for taking it off, and defendant paid the purchase money in full. The patents for the lands issued in 1876, and the defendant afterwards cut timber, for which the patentees brought trespass.