

*Per* FALCONBRIDGE, J., dissenting: The defendant, before coming to the High Court for prohibition, is bound to apply to the county judge somewhere, either at or before the trial, to transfer the cause; and in this case he did not so apply.

*Shepley*, Q.C., for the plaintiff.

*G. W. Marsh* for the defendant.

FALCONBRIDGE, J.]

[Dec. 5.]

MURRAY v. MACDONALD.

*Life insurance — Policy — Construction of — Money payable to "children" — Representative of deceased child.*

By a policy of life insurance, the insurers agreed to pay the amount of the insurance within ninety days after notice and proof of the death of the insured to the wife of the insured, or her legal representatives; or, if she should not then be living, to her children, or to their guardian, if under age. The wife predeceased the insured. Two of her children predeceased her, one of them leaving a child.

*Held*, that only the children who survived the wife were entitled to share in the insurance moneys payable under the policy.

*Bain*, Q.C., for the plaintiffs.

*Marsh*, Q.C., for the defendant.

### Chancery Division.

BOYD, C.]

[Oct. 4.]

RE McDOWELL AND THE CORPORATION OF THE TOWN OF PALMERSTON.

*Legislative Assembly — Powers of, to change ownership of land — Necessity for intervention as to burial ground — 48 Vict., c. 92 (O.).*

The legislature has power, as far as abstract competence is concerned, to change the ownership of land in the province without making any compensation. The intervention of the legislature is necessary to change the distinctive character of a burial ground or the site of the graves. The provisions in 48 Vict., c. 92 (O.), providing that the costs of legislation and re-interment should be charged against the compensation to be allowed to the original owner of the land were just, and should be charged against the value of the land.

*A. M. Clark* for the motion.

*Guthrie*, Q.C., and *Hoyle*s, Q.C., *contra*.

STREET, J.]

[Nov. 15.]

SKLITZKY v. CRANSTON.

*Plan — Streets on — Sale of lots by — Highways — Township lot — Right of way on streets — Right of action — R.S.O., c. 152, s. 62 — Costs.*

A street laid out through a township lot where no village exists is a private street, even though lots are sold facing on it, until the township council adopts it as a public highway, or until the public, by travelling on it, accepts the dedication offered; and s. 62 of R.S.O., c. 152, applies only to incorporated villages.

A purchaser of a lot on a registered plan of a township lot acquires against his vendor a private right to use the streets on the plan, subject to the right of the public to make them highways.

The plaintiff having brought this action to restrain the fencing-in of certain streets, one of which was found by the trial judge to be a highway, and, not having shown any special or peculiar damage not shared in by the public, was

*Held* not to be entitled to maintain the action as to that street, and was ordered to pay the costs of that part of the action.

*Held*, also, as to other streets on the plan not found to be highways, that the plaintiff was not necessarily entitled to a roadway over every part of the streets, but to such a width as might be necessary for his reasonable enjoyment of it.

*Held*, also, that as there was no immediate or serious damage to be apprehended from the maintenance of fences on the streets it was unnecessary to apply for an interim injunction, which was obtained, and that the plaintiff must pay the costs of it.

*J. P. Mabee* and *J. L. Darling* for the plaintiff.

*Garrow*, Q.C., and *G. G. McPherson* for the defendant.

FERGUSON, J.]

[Nov. 17.]

MITCHELL v. MCMURRICH.

*Action for damages for wrongful issue of a writ in a civil action — Malice — Special damage — Demurrer.*

*Held*, on demurrer to a statement of claim in an action for damages for the wrongful issue of a writ of summons in a civil action in the name of a third person, that

(1) The statement that the writ was issued