

small quantity of wood in the winter time by a wood road across a portion of plaintiff's land not included in the area assigned for dower, the land being at the time in the possession of a tenant-at-will.

Per HENRY, J.—It was not sufficient for the plaintiff to establish that the acts complained of were such as could not be justified by the tenant; he must also show an injury to the inheritance.

Also, that even if plaintiff were entitled to recover on his claim for trespass to land outside of the dower, the court would not set the judgment aside for that purpose, the matter being subordinate to the real matter in dispute.

F. B. Wade, Q.C., for appellant. R. L. Borden, Q.C., for respondent.

Full Court.]

FRASER v. DREW.

[May 15.

Assignment for the benefit of creditors—Action by assignee against sheriff levying under execution—Finding of fraud sustained.

In an action brought by plaintiff as assignee of M. against defendant, the sheriff of the County of Queen's, who levied under execution on a portion of the goods covered by the assignment, the defence relied upon was that the deed of assignment was made fraudulently with intent to hinder and delay creditors.

It appearing that the jury had no difficulty in determining the only question upon which they had to pass, and their verdict being in accordance with that finding,

Held, that it could not be disturbed upon any reason based upon the circumstances under which it was rendered.

TOWNSHEND, J., dissented on the ground chiefly that the jury were influenced by matters subsequent to the assignment, which they were directed by the trial judge to disregard.

H. McInnes, for appellant. W. B. A. Ritchie, Q.C., for respondent.

Full Court.]

DAVIS v. COMMERCIAL BANK OF WINDSOR.

[May 15.

Negligence—Dangerous excavation adjoining public thoroughfare—Duty of owner to fence—Proximate cause—Damages.

In an action brought by plaintiff against defendants for having negligently and improperly suffered an excavation or cellar, adjoining a public thoroughfare in the town of Windsor, to remain open to said street without any fence, railing or other protection, so as to be dangerous to persons lawfully being upon or passing along said street, so that plaintiff fell into said excavation or cellar and was injured, the jury found, among other things, that there was negligence on the part of defendants in not having the cellar fenced, and that a reasonably safe fence would have prevented the accident. They assessed the damages which plaintiff was entitled to recover at \$2,500. Defendants' building was destroyed in the fire of