

to be credited towards payment of the purchase price of the land.

Held, that the evidence was inadmissible as contradicting or varying the written agreement.

Also, that a bill of sale taken by plaintiff after notice of the execution in the sheriff's hands was void under the statute. *Blauie v. McLennan*, 33/558.

#### VII. (A) RECOVERY OF MONEY PAID.

**17. Sale of mining property**—Report of expert—Fraud and misrepresentation.

See MINES AND MINERALS, II. (C.)

#### VII. (B) ACTIONS FOR BREACH OF CONTRACT.

**18. Contract for purchase and sale of land**—*Substituted agreement*—*Estoppel*.]

—Plaintiffs went into possession of land under a written agreement under seal to purchase from defendants. A portion of the purchase money was paid on the completion of the agreement, and the balance was to be paid on the delivery of the deed. An action of trespass was brought against plaintiffs by D., who was in possession of the land at the time, having gone into possession under a prior agreement of a somewhat similar character. On the trial of the latter action, an agreement was entered into in open court, under which plaintiffs agreed to relinquish their claim to the land on being repaid the amount of their deposit, with interest, and defendants agreed to convey the land to D.

Held, that plaintiffs, having become parties to this agreement, were estopped from making any claim for damages against defendants, on account of the failure of the latter to carry out their agreement to convey to plaintiffs; that, if plaintiffs intended to reserve such a right, they were bound to say so, and could not, by their silence, mislead the parties into such a change of their position as would materially affect their rights and liabilities.

Held, further, that the fact of the agreement between plaintiffs and defendants being under seal, did not prevent the parties from entering into a new and different agreement.

Held, also, the contract being one relating to land, and defendants being unable to make title, that, in the absence of fraud, plaintiffs could not recover damages for the loss of their bargain, but only for the expenses incurred by them. *Wentzell v. Ross*, 30/136.

**19. Sale of lots**—*Mistake of agent*—*Damages*.]—Defendant refused to complete a contract for the sale of a number of lots of land, made through her agent, F., on the ground that she had been misled by F., and thought she was only authorizing the sale of lots known as the "swamp lots," and not a number of lots adjoining.

Held, that defendant was responsible for the mistake or negligence of her agent, and for damages caused by the breach of a contract which she had authorized him to make, the terms of the contract being clear and plaintiff's conduct in the whole transaction unimpeachable. *Jenkins v. Murray*, 31/172.

Defendant appealed to the Supreme Court of Canada and her appeal was allowed with costs on the ground of error. The acceptance of the offer for the purchase of the lots

having been authorized through the incorrect representation made to defendant, and under a mistaken impression as to the lots to be included, the contract made by defendant's agent for the sale of the lots was not binding upon her, as the parties were not *ad idem* as to the subject matter of the contract, and there was no actual consent by the owner to the agreement for the sale made by her agent. *Murray v. Jenkins*, 28 S. C. C. 565.

#### VENUE.

**1. Application for change of venue**—Ground of convenience.

See EVIDENCE, IV. (C.).

**2. Change of venue.**]—The affidavits produced by both parties on an application for change of venue showed that the balance of convenience preponderated in favor of the change. An order directing the change having been made by the Chambers judge, to whom the application was made.

Held, dismissing plaintiff's appeal with costs, that the judge's conclusion should not be disturbed. *Munro v. McNeil*, 29/79.

#### VERDICT.

**1. Allowed to stand subject to reduction of damages.**

See LIBEL AND SLANDER, IV. (D.).

**2. Question peculiarly for jury**—Verdict allowed to stand.

See LIBEL AND SLANDER, IV. (E.).

See also APPEAL AND ERROR, XVI. (G); TRIAL, IX.

**3. Vested and contingent interests.**

See WILLS, VI. (F.).

#### VIS MAJOR.

**Plea of**—Injury to land caused by logs driven up and down stream by tide.

See WATERS AND WATERCOURSES, II. (A.).

#### WAGERS.

See GAMING.

#### WAGES.

See SEAMEN.

#### WAIVER.

**1. Action wrongly brought**—Acceptance of replication after notice of trial.

See PLEADING, XIII.