

Com. Pleas Div.]

NOTES OF CANADIAN CASES.

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order for the goods was given on the 5th September, 1885, and part of the goods sent to defendant, another portion was delivered in November, and the residue somewhat later. In January the defendant went to Montreal, and asked to get an extension of time, as he said, to see if the goods would turn out all right which the plaintiff refused to give, and defendant said if they did not turn out all right he would ship them back. A large quantity of the goods were sold. In February the defendant claimed to be entitled to return the goods because, as he alleged, they did not answer the contract, the defect being a latent one, and not discoverable by ordinary inspection and examination. There was no evidence to show what defendant's alleged loss was.

Held, that under the circumstances there was no defence to the action on the notes; but that the defendant's remedy, if any, for the plaintiff's alleged breach of contract in supplying goods not as ordered must rest on the counter-claim; but that there could be no judgment thereon, as there was not sufficient evidence of the loss sustained, and as the learned judge at the trial has entered judgment for the plaintiff without prejudice to the defendant bringing an action for damages if so advised.

Aylesworth, for the plaintiff.

McCarthy, Q.C., S. M. Jarvis, for the defendant.

WELSH V. CORPORATION OF ST. CATHARINES.

Municipal corporations—Public drain—Private drain connecting therewith—Water backing—Liability of corporation.

To render a corporation liable for injury from the overflow of a drain it must be shown affirmatively that the corporation required the property owners to use the public drain by connecting their private drains therewith; that the drain has been improperly and negligently constructed, or that it has become obstructed, and the corporation have negligently omitted to remove the obstruction within a reasonable time after knowledge or notice, and injury resulting therefrom; or that the corporation have brought more water to the plaintiff's land by means of the drain than would otherwise have come thereto, and wil-

fully poured it thereon, or negligently allowed it to escape and flow on the land.

The plaintiff had a house on a street in the city of St. Catharines which was drained by a drain running through private grounds to and under a raceway; but this was stopped by the persons owning the lands on the other side thereof, in which the water flowed. There was an open ditch, or drain, on the east side of the street connecting with the raceway. The raceway, which was no higher than the street, was afterwards banked up, whereby the flow of the water was stopped and was spread over the adjoining lands, whereupon R., the then owner of plaintiff's house, and others, petitioned the council to construct a drain under the raceway, which was done by means of a well at the raceway and a five-inch pipe under it. R. then connected his box drain with the well. The only evidence of acquiescence by the corporation was the knowledge thereof by O., the defendant's street inspector, and no objection made by him; afterwards the defendants connected the drainage of other streets with the well, whereby more water was brought down to the well than the five-inch pipe would carry off, and it flowed back on the plaintiff's premises.

Held, following *McConkey v. Corporation of Brockville*, 10 O. R., that the defendants were not liable for the damage sustained by the plaintiff.

Lash, Q.C., and R. G. Cox, for the plaintiffs.

Moss, Q.C., and Macdonald, for the defendants.

RAE V. McDONALD.

Insolvency—Preference—R. S. O. ch. 118, 48 Vict. ch. 26, sec. 2, construction of—Donee—Misdirection.

Under R. S. O. ch. 18, as amended by 48 Vict. ch. 26, sec. 2 (O.), one of three things must occur before a conveyance, assignment, etc., of any real property can be impeached, viz., the person making the disposition of his property by any of the modes indicated must (1) at the time be in insolvent circumstances, or (2) be unable to pay his debts in full, or know that he is on the eve of insolvency; and in addition the (1) disposition must be made by the owner of the property with the intent to defeat,