

c. 221, s. 10, vested the absolute property in the deer in the plaintiffs.

Prohibition was granted to a Division Court where there were no facts in dispute, and the Judge in the inferior Court applied a wrong rule of law to the facts, and grounded his judgment upon a misconstruction of the facts above referred to.

*W. M. Douglas* for plaintiffs.

*C. E. Barker* for defendant.

Div'l Ct.]

[June 27.

PECK *v.* AGRICULTURAL INS. CO.

*Insurance—Fire—Unoccupied building—Special condition—Reasonableness—Information given to agent of Insurance Co., but not in application—Powers of agent—Evidence—Rejection of.*

The defendants issued a policy of insurance against fire, dated 23rd April, 1889, upon a house of the plaintiff.

The application signed by the plaintiff stated that the house was occupied as a residence by the plaintiff's son. A fire took place on the 14th November, 1889, at which date, and for six months previously, the house had been unoccupied. One of the special conditions indorsed upon the policy was that if a building became vacant or unoccupied, and so remained for ten days, the entire policy should be void. The plaintiff and his wife swore that when the agent came to him and drew the application he asked the plaintiff if there was anyone in the house at the time, and the plaintiff told him that his son was living there at the time, but was going to leave in about two weeks, and asked if that would make any difference, and was informed by the agent that it would not. By a clause in the application the plaintiff agreed that no statement made or information given by him prior to issuing the policy to any agent of the defendants should be deemed to be made to or binding upon the defendants unless reduced to writing and incorporated in the application; and on the margin of the application there was a notice showing that the powers of agents were limited to receiving proposals, collecting premiums, and giving the consent of the defendants to assignments of policies.

*Held*, that the special condition referred to was not an unreasonable one, and that the agent had no power to vary it; and an action to recover the amount of the loss was dismissed.

The plaintiff at the trial sought to give evidence of certain transactions between the agent of the defendants and a brother of the plaintiff for the purpose of showing that the plaintiff, having become aware of them before the application was made by him, was justified in believing that the defendants did not regard the condition as to occupation as a material one.

*Held*, that this evidence was properly rejected.

*Clute*, Q.C., for plaintiff.

*J. W. Kerr* for defendants.

*Practice.*

C. P. Div'l Ct.]

[June 27.

MCLEAN *v.* BRUCE.

*Receiver—Residuary estate under will—Cross-examination of executor and residuary legatee—Account of debts and legacies unpaid.*

In answer to the defendant's application for a receiver to receive the interest of the plaintiff as residuary legatee under a will, of which he was also the surviving executor, the plaintiff filed an affidavit in which he stated that the estate was insufficient to pay the debts and specific legacies, and that there would be no sum coming to the plaintiff as residuary legatee.

*Held*, that the plaintiff upon cross-examination upon his affidavit must swear as to whether there were any and what debts and legacies unpaid.

*H. Cassels* for plaintiff.

*Hoyles*, Q.C., for defendant.

C.P. Div'l Ct.]

[June 27.

MACLEAN *v.* THE BARBER & ELLIS CO.

*Discovery—Inspection of document before delivery of statement of claim—Merits.*

In an action to recover an amount alleged to be due by the defendants upon an advertising contract after crediting an amount admitted to be due by the plaintiff to the defendants for illegal rent, and also to recover damages for illegal distress for rent, it appeared that the defendants had agreed to pay a certain sum to the plaintiff for advertising, and had also written a letter to the plaintiff agreeing that a certain part of the rent should be taken out in advertising. This letter purported to be in answer to a letter