in this case one-quarter, which should be looked to rather than the actual amount.

It was proved that the plaintiff was himself present at the sale in question and purchased one lot, which was ten or eleven ahead of the lot in question, and also another lot three below it on the list; but it was not shown that he was present when the actual lot in question was sold.

Held, that he was not estopped by conduct from complaining of it.

Held, also, that the fact that the plaintiff was informed within three months after the sale of the lot having been sold, when he might have redeemed it, if such was the fact, did not deprive him of his right of action.

Walkem, Q.C., and *Machar*, for the plaintiff.

G. Macdonald, for the defendant, H. T. Shibley.

Britton, Q.C., for the defendant, S. Shibley.

Ferguson, J.] [June 27.

CANADIAN LAND AND EMIGRATION CO. v. THE TOWNSHIP OF DYSART ET AL.

Payment out of court—Appeal to Supreme Court of Canada—Discretion of court.

The plaintiffs were appealing to the Supreme Court of Canada from a judgment of the Court of Appeal. The defendants applied for payment out of Court to them, as the successful parties in the action, of a sum of $5,000 paid in by the plaintiffs and representing the whole subject-matter of the litigation.

Held, that the application was in the discretion of the Court; that that discretion should be exercised in the same way as upon an appeal to the Court of Appeal, and that the application should therefore be refused, following *King* v. *Duncan*, 9 P. R. 61.

Lockhart Gordon, for the plaintiffs.

W. H. P. Clement, for the defendants.

Rose, J.] [July 2.

COPELAND v. THE CORPORATION OF THE TOWNSHIP OF BLENHEIM.

Costs of trial where jury disagree—Rule 428, O. J. A.

The action was tried twice. At the first trial the jury disagreed, but at the second there was a verdict for the plaintiff, which was sustained by a Divisional Court.

Held, that the costs of the first trial were properly taxable to the plaintiff, as part of the costs which should follow the event mentioned in Rule 428, O. J. A.

Langton, for the plaintiff.

Holman, for the defendants.

Rose, J.] [July 3.

MCGARVEY v. THE CORPORATION OF THE TOWN OF STRATHROY.

Costs—Scale of.

An order in Chambers referred the action, which was in the High Court, to the Master at London to assess the damages and to tax the costs to whichever party was successful in a certain appeal. There was no trial of the action and no judgment was entered. The Master assessed the damages at $60, and taxed to the plaintiff who succeeded in the appeal his costs on the High Court scale.

Held, on appeal, that the Master had no power under the order to determine upon what scale the costs should be taxed, and therefore he was right in taxing upon the scale of the Court in which the action was brought.

Aylesworth, for the appeal.

Folinsbee, contra.

Mr. Dalton, Q.C.] [July 4.

TAYLOR v. COOK ET AL.

Judgment against partnership—Admission by one partner—Rule 322, O. J. A.

The statement of one partner on his examination in a suit against the firm, as to transactions which occurred during the partnership, binds all the partners, unless they seek by an examination of some of themselves to contradict or qualify the statements of the partner whose evidence they object to.

Leave was given under Rule 322, O. J. A., to sign judgment against the defendant partnership upon admissions in the examination of one partner.

Watson, for the plaintiff.

Ogden, for the defendants.