

amount of the judgment been recovered from the syndicate, B. would not have benefited thereby.

Appeal dismissed with costs.

Anglin, K.C., and Glyn Osler, for the Canadian Bank of Commerce. Holman, K.C., and Congdon, K.C., for Barrette. C. J. Bethune, for Le Syndicat Lyonnais du Klondyke.

On:

CLERGUE v. VIVIAN.

[May 5.

Contract—Agreement for sale of land—Deferred possession—Payment of instalments—Default—Vendor's remedy—"Or" read as "and."

C. accepted an offer by V. for sale of land undertaking to pay certain instalments of the purchase money before receiving the conveyance. On default in payment,

Held, affirming the decision of the Court of Appeal (16 O.L.R. 372) which maintained the judgment of the Divisional Court (15 O.L.R. 330) that V. was not restricted to an action in damages for breach of contract but could sue for the unpaid instalments. *Laird v. Pin*, 7 M. & W. 474, distinguished.

The offer was accepted by C. for "myself or assigns."

Held, that to give effect to the intention of the parties to make a contract "or" should be read as "and." IDINGTON, J., dissenting. Appeal dismissed with costs.

Middleton, K.C., for appellant. Douglas, K.C., and Lefroy, K.C., for respondents.

Province of Ontario.

COURT OF APPEAL.

Full Court.]

[April 5.

FRASER v. PERE MARQUETTE R.W. Co.

Crops—Destruction by fire—Railway Act, s. 298—Liability of railway company—Marsh hay baled and piled at siding.

This was appeal by the defendants from the order of a Divisional Court affirming the judgment of TRETZEL, J., at the trial (see ante, vol. 44, p. 619), in favour of the plaintiff. The point