

Ct. Ap.]

NOTES OF CANADIAN CASES.

[Ct. Ap.]

decided in *Stanger-Leathes v. Stanger-Leathes*. W. N., 1882, p. 71. The decision of Vice-Chancellor Bacon is in my opinion clearly law. I have gone to the trouble of delivering judgment in the present case because the Vice-Chancellor's decision, reported as it is in a mere note, has been doubted, but in my opinion without reason.

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### NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE  
LAW SOCIETY.

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#### COURT OF APPEAL.

[September 8.]

**SCRIBNER V. KINLOCH ET AL.**

*Sale of goods—Vendor employed as clerk—Change of possession—Immediate delivery—R. S. O. ch. 119.*

The judgment of the Queen's Bench Division (2 O. R. 265) was affirmed with costs, the judges in this Court being two for and two against the appeal.

*McCarthy, Q.C., H. Cameron, Q.C., Dougall, Q.C., and McPhillips, for the appellants.*

*S. Smith, Q.C., J. K. Kerr, Q.C., and Holman, for the respondent.*

[September 14.]

**DOUGLAS V. HUTCHINSON.**

*Married woman—Dower—Separate estate—Fi. fa.*

The defendant's first husband died in 1870, and she contracted a second marriage in 1871. This action was begun before the Married Women's Property Act, 1884, was passed.

*Held* (reversing the judgment of OSLER, J. A., 6 O. R. 581), that the defendant's right to unassigned dower in the lands of her first husband was not separate estate, but fell within the provisions of R. S. O. ch. 125, sec. 3, and was not liable to be sold under execution to satisfy the plaintiff's judgment.

*Quære*, per PATTERSON, J. A., whether a *fi. fa.*

is the appropriate remedy for reaching the separate property of a married woman.

*W. H. P. Clement, for the appeal.*

*J. J. Maclaren, contra.*

[September 15.]

**HENDRIE V. NEELON.**

*Contract for sale of timber—Non-delivery—Loss of profits—Measure of damages.*

The judgment of the Queen's Bench Division (3 O. R. 603) was affirmed on appeal.

*Edward Martin, Q.C., for the appeal.*

*McCarthy, Q.C., contra.*

[September 15.]

**BELL V. FRASER.**

*Creditor—Security—Account of balance—Loss by agent—Payment into Court—Defence—Condition—Liability—Satisfaction—Order XXVI. O. J. A.*

The plaintiff, as assignee of an insolvent estate, claimed from the defendant, a creditor of the estate, an account as to his dealings with timber limits held by him as security, and payment of any balance. The timber was placed in the hands of K. & Co. for sale.

*Held*, upon the facts stated (affirming the decision of FERGUSON, J.), that the defendant was not liable for a loss occasioned by K. & Co.'s failure to pay over part of the price of the timber sold by him.

The defendant stated in his defence that in case the Court should be of opinion that the defendant was liable for payment of the balance, etc., the defendant brought into Court the sum of \$4,300, saying that the same was sufficient to pay in full all claims of the plaintiff in respect of the balance, etc., and paid into Court under this defence the said sum of \$4,300, which was withdrawn by the plaintiff after issue and before the trial.

FERGUSON, J., although he held that the plaintiff was not entitled to recover, refused to order him to refund the \$4,300.

The members of this Court being equally divided in opinion, an appeal from such result was dismissed with costs.

*Per* HAGARTY, C.J.O., and OSLER, J.A.—There was only one way in which this money