

mortgagor and mortgagee, and not of cestui que trust and trustee; (3) that the sale proceedings were not irregular; (4) that there had been undisputed possession of the premises, adverse to the plaintiffs' title, for such time as to debar the plaintiffs. Action dismissed with costs. J. H. Rodd and F. D. Davis, for the plaintiffs. A. R. Bartlet, for the defendants the executors. G. A. Urquhart, for the defendant club. J. H. Coburn, for the defendant Woollatt.

CANADIAN PACIFIC R.W. CO. v. FOSTER—FALCONBRIDGE, C.J.K.B.
—JULY 13.

Promissory Note—Action on—Defence—Failure to Establish—Onus.—Action upon a promissory note for \$1,400 signed by the defendant, tried without a jury at Toronto. The learned Chief Justice, in a written judgment, said that the onus of establishing his defence was upon the defendant; and the defence failed upon the facts. Judgment to be entered for the plaintiffs, after 15 days, for \$1,400, with interest at 8 per cent. from the 25th March, 1914, until judgment, and with costs. John D. Spence, for the plaintiffs. G. G. Plaxton and R. O. Daly, for the defendant.

HAYDEN v. THOMPSON—BRITTON, J.—JULY 15.

Landlord and Tenant—Rent Payable in Kind—Distress for Rent—Sum of Money Named in Warrant—Acceleration Clause in Lease—Waiver of Right to Invoke—Excessive Distress—Damage—Chattel Mortgage.—Action by a tenant against his landlord for wrongful and excessive distress and in trover as to goods and chattels not sold, but kept by the defendant. The action was tried without a jury at Kingston. BRITTON, J., read a judgment in which, after setting out the facts, he said that two important questions arose, but the determination of them might not be necessary.—The first question was, whether distress under a landlord's warrant could legally be made for rent payable in kind, under the special and particular terms of this lease. The defendant was entitled as of right to his share of the crop—he was entitled to have it set apart, and to assist in the division. If the defendant reckoned in money, and arrived at the conclusion that there was due to him for rent the sum named in the distress war-