Practice.

BOYD, C.] [Oct. 14.

STEWART *v.* ROWSOM.

Mortgage—Power of sale—Exercise of—Sale of timber only—Notice of sale.

A mortgagee of timbered land, whose mortgage contained the ordinary short form of power of sale authorized by R.S.O., c. 107, in the exercise of such power sold the timber without the land.

Held, that the sale, as an exercise of the power, was void.

Held, also, upon the evidence, that no such notice of sale was given to the plaintiff as he was entitled to under the power.

D. Robertson for the plaintiff.

H. P. O'Connor, Q.C., for the defendants.

MACMAHON, J.] [Oct. 17.

ARDILL *v.* CITIZENS INSURANCE CO.

ARDILL *v.* ÆTNA INSURANCE CO.

Fire insurance—Contract for sale of insured building—Change of title—Change material to the risk.

On the 14th March, 1892, the plaintiffs entered into a contract with a firm of contractors for the erection of a brick church, and it was thereby provided that the fabric of the plaintiffs' old frame church and other building material was to become the property of the contractors, at a valuation of $525, as a first payment under the contract; and it was further agreed that the contractors were to have "full possession of premises and old church building, so as they may be able to commence operations on the first day of April next." On the 15th March, 1892, the old church was completely destroyed by fire. At the time of the fire policies of the defendants were in force, under which it was insured for $2,400. The plaintiffs, previous to the 1st April, 1892, paid the contractors $150 for any loss they might have sustained by the destruction of the church, and proved their claim against the defendants at about $2,100.

Held, that upon the construction of the building contract, the church was to remain the property of the plaintiffs until the 1st April, 1892, and at the time of the fire there had been no assignment, alienation, sale or transfer, or change of title to the property, and there had been no change material to the risk. The plaintiffs were therefore entitled to recover from the defendants the amount of the loss.

S. H. Blake Q.C., for the plaintiffs.

Osler, Q.C., and *H. H. Collier* for the defendants.

THE MASTER IN CHAMBERS.] [Oct. 24.
GALT, C.J.] [Nov. 4.
ROSE, J.] [Nov. 22.

HARDING *v.* KNUST.

Costs—Taxation—Witness and counsel fees—Disallowance—False affidavit of increase—Motion to set aside certificate of taxation—Master in Chambers—Judge in Chambers—Jurisdiction.

Upon the taxation of the plaintiff's costs of action, he made the usual affidavit of increase, and was thereupon allowed for disbursements of sums of money as witness and counsel fees. The taxation was closed, and the certificate was issued without objection. The defendant afterwards discovered that the fees had not been paid, as stated in the affidavit, and made a motion to set aside the certificate and have the items in question disallowed.

Held, that neither the Master in Chambers nor a Judge in Chambers had jurisdiction to entertain the motion.

Upon motion to a judge in court:

Held, that the items should be disallowed.

Hornick v. *Romney*, 11 C.L.T. Occ.N. 329, followed.

E. F. B. Johnston, Q.C., for the plaintiff.

W. R. Smyth for the defendant.

ROSE, J.] [Oct. 31.

STEVENSON ET AL. *v.* CRAYSON.

Jury notice—Equitable cause of action.

Upon the application noted *ante* p. 574 being heard before the trial judge, the jury notice was struck out.

Wallace Nesbitt and *T. A. Snider* for defendant.

Nesbitt, Q.C., and *Gauld* for plaintiffs were not called on.
