AT OSGOODE HALL

ANNOUNCEMENTS.

18th December, 1913.

There will be no sittings of single court on Monday, 22nd inst., but court and chambers will both be held on Tuesday, 23rd inst., afterwards on Friday, 26th inst., and Friday, 2nd January, 1914.

Judge's chambers will be held on Friday, 19th inst., at 11 a.m.

Peremptory list for appellate division for Friday, 19th inst., at 11 a.m.:

1. Livingston v. Livingston (to be continued).
2. Dick v. Standard Underground Cable Co.

Master's Chambers.

Before George S. Holmested, K.C., Registrar.

Cockburn v. Kinsella—F. C. Snider, for plaintiff, moved for judgment on consent. Held that the master has no jurisdiction.

Fehrenback v. Granel—A. L. Bitzer (Berlin), for plaintiff, moved for order striking out defence and for judgment. W. H. Gregory for defendant. Motion refused without prejudice to plaintiff's further prosecution of action. Costs to defendant in any event.

Love v. Love.—J. I. Grover, for plaintiff, obtained order that defendant pay plaintiff's costs of abandoned motion in any event.

Anglo American Fire Ins. Co. v. Bulgaria, etc.—H. J. Martin, for defendant, obtained on consent order for commission to take evidence in London, England, and order postponing trial until after 1st March next.

Mexican Northern v. Pearson—G. Osler, for defendant, renewed motion for particulars. A. R. Thomson for plaintiff. Reserved.

Niebergall v. Rimouski Fire Ins. Co. —I. E. Wallace, for defendant, obtained order on consent dismissing action without costs.

Single Court.

Before the Chancellor.

Bank of Ottawa v. Leblanc—W. R. Smyth, K.C., for defendant, but representing both parties in asking enlargement, obtained enlargement of two appeals herein for three weeks.

Vandusen v. O'Reilly—E. A. Read (Brantford), for plaintiff, moved for injunction. Defendant O'Reilly, in person, asked enlargement. On defendant undertaking not to interfere with plaintiff's work of seating, etc., meantime, motion enlarged until 23rd inst. Plaintiff to proceed with his work of seating, etc., without prejudice to defendant's rights.

Re Martin Estate—A. L. Bitzer (Berlin), for executors of will of Joseph S. Martin, obtained enlargement of motion until 23rd inst. The official guardian to be notified.

Re Laidlaw and Campbellford L. O. and W. Ry. Co.—A. MacMurchy, K.C., for the Railway Company, moved to set aside award of 26th August, 1913, awarding the owner $6,800 for land expropriated. M. K. Cowan, K.C., and E. G. Long for Laidlaw. Judgment: The first two grounds are untenable. The third ground is that the arbitrators did not act judicially, but conferred with one of the parties in the absence of the other, and in this and other respects were guilty of misconduct sufficient to invalidate the award. Actual misconduct there is none in the present case, nothing more than mere indiscretion. Another matter was argued which is not in the notice of motion, but it ought not to prevail. The motion is dismissed with costs.

Trial.

Before Middleton, J.

Edwards v. Public School Board, sec. 3, Township of East Oxford—S. G. McKay, K.C., for plaintiff; R. N. Ball, K.C., for defendants. Action to recover $1089.80, balance claimed to be due upon contract for erection of school building. Judgment: Upon the evidence I do not think plaintiff has established his claim to $28.50 for larger size of door frames. The remaining question relates to the penalty. I think there was such default on the part of the trustees; and the architect was so dilatory that it is impossible to enforce a penalty under these circumstances. Neither do I think they are entitled to the damages they claim. The result is that the plaintiff is entitled to recover the amount sued for, $1089.80, less $28.50 and $130 (the amount agreed upon for abatement for all matters where there had been a departure from the strict terms of the contract), amounting to $931.30, and interest from April 30, 1913, the date of architect's certificate, and costs of action. The money paid into court, $513.30, and any accrued interest to be paid out to plaintiff on account thereof.

Richardson v. Georgian Bay Milling and Power Co.—J. J. Maclennan for plaintiffs; G. W. Mason and F.C. Carter for defendants. Action for $9610.56, balance claimed for wheat sold by plaintiffs to defendants. Judgment: Plaintiffs sold defendants 10,000 bushels wheat at 94½c per bushel, delivery to be at option of purchaser, but within reasonable time. Plaintiffs drew on defendants for price, but draft was allowed to stand unaccepted and unpaid, it being understood between parties that purchaser should pay carriers' charges, i.e., elevator charge, interest and insurance upon wheat in question. Defendants could not obtain delivery without first paying draft. While matters were in this situation a fire occurred and the wheat was destroyed. The question is, which party is called upon to bear the loss. There is nothing here to take the case out of the general rule laid down in Graham v. Laird, 20 O.L.R., 11. The action, therefore, fails and must be dismissed with costs.

City of Woodstock v. Woodstock Automobile Manufacturing Co.—S. G. McKay, K.C., for plaintiff; W. T. McMullen, K.C., for defendants. Action to recover $3500 on a mortgage from defendants to plaintiffs, or for foreclosure of equity of redemption and for possession. Judgment: I do not regard the provision in the mortgage relating to the assignment as constituting any clog upon a redemption. The mortgage debt has been reduced to $3000. I do not think the municipality is bound to accept the employment of men by the furniture company as a compliance with proviso in mortgage. What was sought was the establishment of a new industry in the city. This cannot, against the will of the municipality, be converted into a bonus to an industry already existing. The mortgage is a security for the money advanced, not to be enforceable if the mortgagor lived up to the covenant as to employment. The mortgagees are entitled to add the costs of the action, and possibly some other items ought to be taken into account. If this cannot be agreed upon, I may be spoken to. Judgment for foreclosure and possession. Redemption to be within six months, on payment of $3000 and interest from April 12, 1913.

McBain v. Township of Cavan—I. F. Hellmuth, K.C., and J. E. L. Goodwill (Peterboro) for plaintiff; R.RuJdy, K.C., for defendant. Action for damages for breach of agreement between the parties that council would open channel and protect it by gates on outlet, plaintiff to close said gates in proper time to protect channel from filling up by spring freshets, council to keep channel open. Judgment: Plaintiff could have cleared out the ditch himself in 1912 for $10, and in 1913, if it had again filled up, for a like sum. This, I think, fixes his damages at $20. The defence as to validity of contract has no more foundation in law than in morals. Plaintiff seeks a mandatory order directing the municipality to comply with its contract and keep the water course clear in the future. I do not think he is entitled to this. I think his remedy is to himself perform the work contracted for, and to sue for its cost as damages sustained upon each succeeding breach. Judgment for $20, with costs fixed at $100, as this litigation has in effect determined the wider question raised by the defendants, the validity of the contract.

Before Lennox, J.

Kenner v. Proctor—R. McKay, K.C., and R. T. Harding (Stratford) for plaintiff; R. S. Robertson (Stratford) for defendant. Action to recover $5000 damages for misrepresentation, fraud and deceit by defendant in sale to plaintiff of the one-tenth interest in lands in question. Judgment: I am not satisfied that the evidence shows conclusively that the defendant did not honestly believe that the statements he made to the plaintiff were true. On the question whether the contract was brought about by the representations complained of, I am inclined to believe as well from the circumstances as from what the plaintiff says, that he was more influenced by his communications with Miller and Ferguson, particularly the latter, and the reputation of McPherson as a money maker, than by anything said by the defendant. Action dismissed without costs, as the litigation was invited by the discovery of lakes and defendant's mistake, if mistake it was, in saying that he had practically explored the whole area.

Appellate Division.

Before Meredith, C.J.O.; Maclaren, J. A.; Magee, J.A.; Hodgins, J.A.

Richmitzer v. Employers' Liability Co.—G. C. Gibbons, K.C., for plaintiff, moved for an order for taking evidence of certain parties. I. F. Helmuth, K. C., for defendants. Stands to hearing of appeal.

Hamill v. Shindelman—M. Wilkins, for plaintiff, moved for order quashing appeal. L. V. McBrady, K.C., for defendant. Upon appellant undertaking to complete papers for appeal by Monday next, no order made on this motion.

Livingston v. Livingston—W. Nesbitt, K.C., H. S. Osler, K.C., and C. C. Robinson, for plaintiff; I. F. Hellmuth, K.C., and J. H. Moss, K.C., for defendant. Appeal by plaintiff from judgment of Middleton, J., of April 16, 1912. Argument of appeal resumed from yesterday, but not concluded.

That Son-in-Law of Pa's -:- -:- -:- -:- -:- By G. H. Wellington