

Com. Pleas.]

NOTES OF CANADIAN CASES.

[Com. Pleas.]

from flowing by and away from his land, and also in not keeping the said dam in repair, whereby the plaintiff suffered damage; (2) That by the erection of the canal so built by them waters, that would not otherwise have done so, flowed into Lake St. John and damaged the plaintiff's land. At the trial a verdict was given for the plaintiff.

On motion to the Divisional Court, the Court, after discussing the evidence and liability of the defendants, were of opinion that in order to arrive at a conclusion as to the liability, if any, of the defendants, there should have been a finding as to whether the damage claimed was caused by the dam or the canal; and, if by the latter, whether by any negligence of defendants or by a *vis major*. A new trial was therefore directed.

J. K. Kerr, Q.C., for the plaintiff.

McCarthy, Q.C., and F. Arnoldi, for the defendants.

Divisional Court.]

[Feb. 28.]

COPELAND V. CORPORATION OF BLENHEIM.

*Municipal corporations—Ways—Negligence—Contributory negligence.*

A building was being erected on a street in the Village of Blenheim. It had a basement several feet deep; the joists of the first floor being about level with the sidewalk. For the purpose of excavating the basement, planks to the distance of twenty feet had been removed from the sidewalk and the earth taken away so as to form a grade into the basement. There were three openings in the basement wall, one in the centre for a door, and one on each side for windows. Where the doorway was there was a hole made by the grade into the cellar. Planks were laid across the open space in the sidewalk. During the day time a plank was laid from the board across the sidewalk to the first floor which it was customary to remove at night, and there was no direct evidence that it was not removed the night in question. The plaintiff, who knew of the dangerous character of the place, was, on the night in question, about 7 o'clock, going along the sidewalk, and while in front of the building met two persons and in endeavouring to get out of their way he struck against something and fell into the hole and was injured.

*Held*, that the defendants were guilty of negligence in leaving the hole unguarded; and that there was no evidence of contributory negligence on plaintiff's part.

Pegley, for the plaintiff.

Meredith, Q.C., for the defendants.

Divisional Court.]

[Feb. 28.]

LEADLEY V. McLAREN.

*Sale of goods—Statute of Frauds—Acceptance.*

Action to recover the purchase money of a large quantity of wool, namely, 39,538 lbs. of white wool at 24 cents per pound, and 11,652 of black wool at 21½ cents per pound under an alleged contract.

*Held*, CAMERON, C. J., dissenting, on the evidence disclosed in the case, there was no contract within the Statute of Frauds so as to bind the defendant; nor any acceptance to take the case out of the statute: that as to the black wool the contract was only for some ten sacks, and that although plaintiff spoke of being able to procure for defendants the larger quantity no contract was ever entered into for it; and as to the white wool, that though defendant had on different occasions received some ten and twenty sacks respectively of it, it was only for the purpose of testing the quality of the wool and not as an acceptance under the contract.

*Held*, therefore, the plaintiff could not recover.

McMichael, Q.C., for the plaintiff.

McLaren, for the defendant.

Divisional Court.]

[Feb. 28.]

GALBRAITH V. IRVING.

*Solicitor and client—Security for costs incurred—Misdirection—Adding parties—Assignment of reversion or future rent—Chose in action.*

The defendant was lessee of certain premises from D. An instrument was signed by D. but not executed under seal, stating that in consideration of certain costs owing by him to plaintiff in certain cases named and other matters and cases, "I hereby assign and transfer unto the said G. H. Galbraith" (the plaintiff) "a certain lease dated," etc., "and made between John Irving" (the defendant) "to me,