

Oct. 1, 1882.]

[Prac. Cases.]

Chan. Div.]

NOTES OF CANADIAN CASES.

the application of the section that the line or limit should have been established according to the Act respecting surveyors and the surveys of lands, R. S. O. 146.

Doe d. Gallagher v. McConnell, 6 O. S., 347, and *Mozur v. Keegan*, 13 U. C. C. P. 547, followed.

Moss, Q. C., (*Nesbitt* with him) for the plaintiff.

Atkinson for the defendant.

Ferguson, J.]

[Sept. 15.]

O'BRIEN v. O'BRIEN.

Gift from husband to wife, during coverture, of deposit certificate.

One James O'Brien, and Bridget O'Brien his wife, were the holders of a certain deposit certificate of the Bank of B. N. A. to the following purport: "Received from James O'B. and Bridget O'B. the sum of \$2,800, for which we are accountable to either, with interest at current rate, etc." Three or four days before his death, James O'B. called his wife to his bedside, and in presence of another witness took the certificate and gave it her, saying she was to keep it for her own use, and unequivocally expressing an intention to make an absolute gift of the money to her.

Held, the husband having died, Bridget O'B. was entitled to obtain the money from the bank.

Donovan for the plaintiff.

S. H. Blake, Q. C., for the defendant Bridget O'Brien.

Ferguson, J.]

[Sept. 15.]

KLEIN v. THE UNION.

Insurance—Mortgage—Subrogation—Statutory Conditions—Company—Power of Manager to compromise claim.

The plaintiffs, who were in business as millers at Tavistock, under firm name of Klein, Kalbfleisch & Co., on February 21, 1879, gave a mortgage to the Union Loan Co. on their mill property. In this they covenanted to insure; and did insure in the Royal Insurance Co. by policy dated March 19, 1879, expiring March 1, 1880. On March 10, 1879, Klein retired from the business, conveying his interest to the other partners, subject to the above mortgage. The Union Loan having a standing arrangement to

effect what policies they could with the Union Fire Insurance Co., and having on March 1, 1880, received no renewal receipt of the above policy, effected a policy with the Union Fire Insurance Co., in the name of the plaintiffs, on the said property. By paper attached, by way of indorsement to this latter policy, the loss, if any, was payable to the Union Loan Co., and the insurance as to the interest of the mortgagee, the Union Loan Co., was not to be invalidated by any act of the mortgagor. Then followed a subrogation clause. This endorsement was signed by the manager only. There was no written application to the Union Fire Insurance Co. for this policy; the policy in the Royal Insurance Co. was simply handed to them, and from this they drew their policy, which had the statutory conditions with variations. No representations were made to them in any other way. The premium on this policy in the Union Fire Insurance Co. was paid by the Union Loan Co., who collected it from the plaintiffs, but the plaintiffs took no part in effecting this policy. On March 14, 1881, the Union Loan Co. wrote a letter to the plaintiffs in which they represented this policy as being indisputable.

A fire occurred on the insured premises on April 22, 1881, and the Union Fire Insurance Co. paid the Union Loan Co. the amount of loss, who assigned the mortgage to the former. The evidence showed that at the time of effecting this policy there was a certain insurance on the property, and also certain mortgages of which the Union Fire Insurance Co. were not informed, and to which they never assented.

The plaintiffs in the present action, which was on this policy, claimed to have the mortgage discharged, and the balance of the insurance money paid to them; the Union Fire Insurance Co. counter-claimed for the amount due on the mortgage.

Held.—Plaintiffs could not recover as against the Union Fire Insurance Co., nor had they any remedy against the Union Loan Co.; and the Union Loan Co. were entitled to the usual judgment in mortgages cases on the counter-claim, and there should be no costs except the usual costs of an undefended mortgage case to the defendants, the Union Fire Insurance Co.

For (i.) Statutory Condition No. 1 was broken, inasmuch as the Union Fire Insurance Co. were