

\$224.65, which said amount formed part of the plaintiff's claim.

Held, by CAMERON, J., that the defence failed: that the plea was bad, in that it did not aver that the defendant was not one of the class of persons authorized to sell liquors without license, to wit, a druggist, who, under certain restrictions, may so sell; while the facts found did not go even so far as the plea, as it was not found that the liquors were to be sold by defendant, but it may have been merely for his own consumption.

C. Durand, for the plaintiff.

Winchester, for the defendant.

MARCH 4.

THE ONTARIO COPPER LIGHTNING ROD COMPANY V. HEWITT.

Insolvency—Composition obtained by fraud—Action for deceit—Sufficiency—Pleading.

A declaration alleged that defendant was indebted to plaintiffs in a large sum of money, to wit, etc., besides the costs of a suit to recover same, and defendant fraudulently represented to plaintiffs that he was insolvent, and unable, by reason of the insufficiency of his assets, to pay said indebtedness in full, and by so representing induced plaintiffs to take a composition in respect of said debt and costs, whereas defendant was not insolvent, etc., whereby plaintiffs lost the difference, etc., and were put to costs in arranging the composition.

Held by CAMERON, J., that it was no objection to the declaration that it did not aver that defendant knew he was not insolvent, because it charged the representation to be fraudulent; but that the declaration was bad because no damage was shewn; for if the plaintiffs were induced to take a less sum through the defendant's fraud the original cause of action still existed and plaintiffs could proceed with their former action.

B. B. Osler, Q.C., for the plaintiffs.

Dr. Spencer, for the defendant.

IN BANCO, HILARY TERM.

MARCH 7.

CHURCHILL V. DENHAM

Replevin Bond—Delay in proceeding—Damages.

In an action for breach of a replevin bond for not prosecuting the replevin suit without delay, the plaintiff at the trial was awarded, as damages, the amount of the rent distrained for. On motion in term on the defendants undertaking to bring the replevin suit down to trial at the next assizes, the damages were reduced to a nominal sum.

J. A. Proctor, for the plaintiff.

J. B. Clarke, for the defendant.

THE GREAT WESTERN RAILWAY COMPANY V. HODGSON.

Replevin—Property passing—Warehouse receipt, Validity of.

This was an action of replevin to try the question of the property in a quantity of pork and lard, the produce of certain hogs which had been taken out of the possession of the plaintiffs who were holding the same to the order of a firm in Chicago.

Held on the evidence set out in the case that the property had never passed out of the plaintiffs, and that they were therefore entitled to maintain the action.

A question was also raised as to the effect of a warehouse receipt given by a firm of packers and curers of pork, which, under the circumstances of this case, was held to be invalid.

Robinson, Q. C., for the plaintiff.

McMahon, Q. C., for the defendant.

MCQUEEN V. PHENIX MUTUAL INSURANCE COMPANY.

Insurance—Interim receipt—Necessity of endorsement thereon of assignment of property—Releases.

An interim receipt on a stock of goods was made, subject to the conditions of the defendant's printed form of policy then in use, one of which conditions was that, "if the property insured is assigned without written permission endorsed thereon by the agent of the company, duly authorized for such purpose, the policy shall hereby become void." After the insurance was effected, the plaintiff assigned the insured property to one M. in trust for the plaintiff's creditors. The