the company, from which action the company shall not be relieved by any notice, condition or declaration, etc., if the damage arises from any negligence or omission of the company or its servants.

The defendants gave the plaintiff a ticket at a reduced rate, on which was printed a condition relieving the company from liabilities beyond $100.

Held (ROSE, J., dissenting), that sec. 25 only applied to negligence in the management, etc., of the train, and not to defective construction; and therefore the defendants, under the circumstances, could avail themselves of the condition.

Per ROSE, J., there was, and *per* CAMERON, C.J., there was not evidence of negligence to go to the jury.

Osler, Q.C., and *Wallace Nesbitt*, for the plaintiffs.

Robinson, Q.C., and *G. H. Watson*, for the defendants.

Div. Ct.]

CARR v. FIRE INSURANCE ASSOCIATION.

Insurance—14 Geo. III., ch. 78, sec. 83—Application to Ontario—Notice by first mortgagee to rebuild.

A mortgage was made by T. H. C. and B. H. C. to D. of certain lands which contained a covenant to insure. A second mortgage was made by the same parties to the Bank of Toronto for securing a large indebtedness to the bank, which also contained a covenant to insure. At the time of the first mortgage there was an insurance for $1400 which was allowed to lapse, and on the bank discovering this, their manager procured T. H. C. to effect an insurance, advancing the amount to pay the premium, charging T. H. C.'s account with the amount, and discounted a note made by T. H. C. and endorsed by B. H. C., the plaintiff herein to cover the same. The policy was to T. H. C. alone, and was on saw mill, $400; on fixed and moveable machinery, shafting, gearing, etc., $1000; on boiler and connections, $100; and on engine and connections, $500. Loss, if any, payable to the bank. On a fire occurring and the property being burnt, D. required the insurance company to expend the insurance moneys as far as they would go in rebuilding the insured premises.

Held, doubting, but following *Stinson* v. *Pennock*, 14 Gr. 604, that the 14 Geo. III., ch. 78, sec. 80, was not merely of local application, but extended to this Province, and that it applied to a case like the present one; but

Per CAMERON, C.J., it only applied to the amount insured on the building, and did not extend to a distinct insurance on fixtures or machinery.

Per ROSE, J., that it covered the fixtures or machinery, etc.

Dalton McCarthy, Q.C., and *Pepler*, for the plaintiffs.

Strathy, Q.C., for the defendants.

Div. Ct.]

DOMINION LOAN AND SAVINGS SOCIETY v. KILROY.

Husband and wife—Separate business—Property of wife.

K., about six years before the trial of this action, had failed in business and become insolvent. The plaintiffs recovered a judgment against him in respect of a debt contracted before his failure. About three years afterwards he made an arrangement with a wholesale firm to supply goods to the wife upon her own credit and responsibility. The wife had no capital of her own. The business was managed solely by the husband, under a power of attorney from the wife, who took no part whatever in the same, and was at first carried on in premises owned by K., subject to a mortgage, for which she neither paid rent nor agreed to do so, but subsequently in premises leased by the wife. These goods were sold, and further goods from time to time purchased. The plaintiffs having seized the goods under an execution issued on them judgment against K.

Held (ROSE, J., doubting), that the goods were the property of the wife and not of the husband.

Osler, Q.C., for the plaintiff.

Moss, Q.C., for the defendant.

[Rose, J.

DOMINION BANK v. COWAN.

Bankruptcy and insolvency—"Unable to pay debts in full"—"Insolvent circumstances," meaning of.

There is no wider meaning to be given to, the words "unable to pay his debts in full," than to "insolvent circumstances"; but both expressions refer to the same financial condi-