obstructed that access to his ship yard, and that in consequence his property had become useless as a ship yard, and had depreciated in value of over 33 per cent.; he also proved that in consequence of the frequent passing of the locomotives there was extra danger of fire, and higher rates of insurance were asked; also that he had suffered personal damage in his business to the extent of $1,200 per annum.

Held, that the building of the drain on suppliant's land, and obstructing of access by way of Young Street to his ship yard had caused "a direct damage to suppliant's property" within the meaning of these words in 31 Vict., c. 12. sec. 34, and for which he was entitled to claim compensation, and which, in this case, he had proved to amount to $3,633.

Held also, that the damages claimed for loss of business and extra risk of insurance were personal damages, and too remote and not such damages for which claimant was entitled to claim compensation under the statute.

(*Metropolitan Board of Works* v. *McCarthy*, L. R. 7 H. L. 216, and *Henry Ricket* v. *The Directors, etc., Metropolitan Ry. Co.*, L. R. 2 H. L. 175, followed.)

Gormully, for appellant.

Lash, Q.C., for respondent.

QUEEN'S BENCH DIVISION.

IN BANCO. DEC. 5, 1881.

WILSON v. GILMOUR.

Ejectment—Life lease—Exception.

R G., owner in fee, leased to his daughters three acres with right of way to a well, orchard and dwelling, after his wife's death, for their lives or that of the survivor. Afterwards he conveyed to his son, W. G., the land which included the three acres, subject to a mortgage, the son having notice of the agreement between R. G. and his sisters. Then W. G. conveyed to plaintiff, "Subject to right of R. G.'s wife and daughters to occupy the house and three acres during the life of them or the survivor, and the right to and from the well," and subject to the encumbrance. The plaintiff executed this deed, and he brought ejectment against the daughters for the three acres.

Held, that the demise of the three acres operated as the creation of an immediate term, with right of occupation by R. G.'s wife during life, and that "Subject to, &c.," in the deed to plaintiff, amounted to an exception, or as a regrant of the three acres to her vendor.

Bethune, Q.C., for plaintiff.

Maclennan, Q.C., contra.

DEC. 1, 1881.

DEVLIN v. QUEEN INS. CO.

Fire policy—No statutory conditions—Wilful negligence.

The statutory conditions were omitted from a fire policy, stated, however, on its face to be subject to the Co.'s conditions indorsed thereon, one of which was that the insured was to use every effort to save and protect the property on pain of forfeiture of policy. The finding at the trial was that plaintiff wilfully neglected to save the property, and it was *held* to be a policy with statutory conditions alone.

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

Osler, Q.C., for defendant.

NORTH OF SCOTLAND MORTGAGE CO. v. UDELL.

Mortgage—Equity of redemption—Merger—Burden of proof.

Defendant, a mortgagor, covenanted to pay principal and interest; he then granted his equity to plaintiff for a mere nominal sum. He gave plaintiff his note for portion of the interest. In an action on the covenant in the mortgage for payment, the jury were directed that if the grant of the equity and note were accepted by plaintiff in full of the covenant, to render a verdict for defendant; but if accepted on condition it should not so operate, to find for plaintiff; that there being no evidence as to how this was, it must be taken to have been accepted in full of the plaintiff's debt, the charge being merged. The verdict having been for defendant, the Court *held* there was no misdirection, the burden of proof that there was no merger being upon plaintiff, and they refused to interfere.

Bethune, Q.C., for plaintiff.

Moore, contra.