

stated his intention to counter-claim for rescission on that ground, and an order was made giving him leave to defend, but subsequently, before any counter claim was delivered, a petition was presented and the winding up order made, and it was held by Wright, J., that the case was within the rule above referred to, and that it was now too late for the shareholder to obtain the relief he claimed.

## REPORTS AND NOTES OF CASES

### Dominion of Canada.

#### SUPREME COURT.

Que.]

PRICE v. ROY.

[May 30.]

*Negligence—Volunteer—Common fault—Division of damages.*

P. was proprietor of certain lumber mills and a bridge leading to them across the River Batiscan. The bridge being threatened with destruction by spring floods, the mill foreman called for volunteers to attempt to save it by undertaking manifestly dangerous work in loading one of the piers with stone. While the work was in progress the bridge was carried away by the force of the waters and one of the volunteers was drowned. In an action by the widow for damages,

*Held*, Gwynne, J., dissenting, that the maxim "volenti non fit injuria" did not apply, as the case was one in which both the mill owner and deceased were to blame and, that, being a case of common fault, the damages should be divided according to the jurisprudence of the Province of Quebec.

*Stuart*, Q.C., and *Olivier*, for appellant. *R. S. Cooke*, for respondent.

Que.]

GASTONGUAY v. SAVOIE.

[June 5.]

*Insolvency—Purchase of estate by inspector—Mandate—Trusts.*

An inspector of an insolvent estate is a person having duties of a fiduciary nature to perform in respect thereto, and cannot be allowed to become purchaser, on his own account, of any part of the estate of the insolvent. *Davis v. Kerr*, 17 Can. S.C.R. 235, followed. Appeal allowed with costs.

*Fitzpatrick*, Q.C., and *Crepeau*, for appellant. *Geoffrion*, Q.C., *Cote* and *Methot*, for respondents.