

Q. B.]

NOTES OF CASES.

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mortgaged the farm to a Building Society, which sold it under a power of sale in the mortgage. On his return plaintiff brought ejectment against the purchaser from the company. *Held*, that he was entitled to recover, and that however culpable he may have been in not communicating with his wife, his negligence did not, even as against a purchaser under the *bond fide* belief that he was dead, stop him from claiming the land. *Held*, also, Wilson, J., dissenting, that he was not barred by the Statute of Limitations, for the possession of his wife was his possession.

Rock, Q. C., and Ferguson, Q. C., for plaintiff
Robinson, Q. C., for defendant.

Rule discharged.

PARSON V. CITIZEN'S INS. CO.

Fire Insurance—39 Vict. Ch. 24—Absence of conditions—Averment of in declaration—Estoppel—Excessive statement of loss—Prior insurance—Excessive valuation.

A policy of Insurance issued after 39 Vict. ch. 24, did not contain conditions made necessary by that Statute.

Held, that the declaration having stated the policy was subject to conditions, setting them out, did not estop plaintiff from contending that there were no conditions, for he could amend if he saw fit.

Plaintiff having stated his loss at a much larger figure than the jury found he had sustained, the Court nevertheless refused to interfere on this ground, as the jury had at the same time found that he acted honestly, in making the representation.

The omission to communicate an existing insurance with another Co. is not *per se* such a wrongful concealment as to sustain a plea of fraud.

Excessive valuation does not avoid a policy unless intentional.

M. C. Cameron, Q. C., for plaintiff.

F. Osler and M. McCarthy, for defendants.

Rule discharged.

PARSONS V. QUEEN'S INS. CO.

Fire insurance—Interim receipts—Prior assurance—Notice of.

In an action on an interim receipt for insurance against fire, it appeared that annexed to the application and delivered to the Company, at the same time was a memorandum of prior assurances.

Held, that the memo. was part of the application, conveying full and correct information of the prior assurances, and the agent having received it, accepted the premium and issued the interim receipt, must, so far as the latter and the right of the plaintiff thereunder were concerned, be held to be the act and assent of the defendants, and therefore that, treating the interim receipt as subject to the Statutory conditions, the 8th condition as to the assent of the Company appearing in or being endorsed on the policy, had been sufficiently complied with.

Held, also, that "as soon after as practicable" in the 13th condition means within a reasonable time.

F. Osler and M. McCarthy for plaintiff.

M. C. Cameron, Q. C., and J. T. Small for defendants.

Rule discharged.

FRAZER V. McFARLANE.

Promissory note—Married woman—Separate liability as indorser.

A married woman, possessed of separate estate acquired by her after the Married Woman's Act of 1874, indorsed a note for the accommodation of her husband, member of a firm to whom credit was given on the faith of such separate estate and her indorsement in reference thereto.

Held, that she was liable.

McLaren for plaintiff.

J. A. Miller for defendant.

Rule discharged.

HERBERT V. MERCANTILE INS. CO.

Fire insurance—Misrepresentation—Warranty—Adverse witness—Discretions of Judge at trial—Right to review.

To a question asked plaintiff, on his application for insurance, whether there was any incendiary danger either threatened or apprehended, the answer was in the negative, but the evidence shewed the contrary in both respects. The contract of insurance made the answer a warranty.

Held, that he could not recover.

The Court will not review the discretion of the Judge at the trial in receiving evidence to contradict a party's own witnesses as being adverse; nor in receiving evidence on the part of the defence after the close of the plaintiff's case, even though for the purpose of corroborating the defence.