

or dividends, for if there had been fraud and misrepresentation plaintiff must recover at least nominal damages.

Held, also, neither party having entirely succeeded, that there should be no costs.

R. L. Borden, Q.C., and *A. Drysdale*, Q.C., for plaintiff.

Ross, Mellish and Mathers, for defendant.

Province of New Brunswick.

SUPREME COURT.

Full Bench.]

[April 27.]

DUNHAM v. ST. CROIX SOAP CO.

Guessing competition—No lottery—Good consideration.

Defendant company, as a means of advertising their soap at an exhibition held at St. John, offered a piano as a prize for the person guessing the correct weight or the nearest to the correct weight of a large cake or block of soap exhibited at the said exhibition. The guessing was free and all persons who desired to guess were provided with coupon tickets upon which to mark their guesses. The tickets were deposited, or were supposed to be deposited, in a box, and the corresponding coupons retained by the respective guessers. The plaintiff guessed within a shade of the correct weight, and after the soap had been weighed presented her coupon with her guess marked thereon, but the judges could not find her ticket in the box and awarded the prize to another person whose guess was not so near the correct weight as the plaintiff's. Plaintiff afterwards brought an action for breach of contract.

Held, on demurrer to plaintiff's declaration that the competition was not a lottery within the meaning of the Criminal Code, and that the exercise of judgment required in the guessing was a sufficient consideration to support the contract.

Currey, Q.C., supported demurrer.

E. P. Raymond, contra.

Full Bench.]

[April 27.]

FERRIS v. BUTT.

Action of slander—Evidence of Judge of Probates as to defendant's personal property.

In an action for breach of promise of marriage the plaintiff called the Judge of Probates of St. John to prove the interest of the defendant in the personal estate of his deceased father, who died intestate. Defendant's mother as administratrix filed a petition for the final passing of accounts and distribution of estate, on which witness as the Judge of Probates ordered the distribution, but the formal order had not been taken out. Witness spoke from his own record.

Held, that the evidence was admissible.

A. W. MacRae, for plaintiff.

C. J. Coster, for defendant.