

STREET, J.]

[Oct. 23.]

MOORHOUSE v. KIDD.

Principal and surety—Contribution between co-sureties—Failure to realize on security.

The plaintiff and defendant were co-sureties for payment of a debt, which the plaintiff paid, and claimed contribution from the defendant. At the time the sureties became bound, the debtor gave them as indemnity a second mortgage on lands in Manitoba. When the plaintiff paid the debt the mortgage deed passed into his custody. The defendant, when called upon for contribution, instead of paying, insisted that the plaintiff should realize upon the security or hand it over to the defendant to proceed upon, but the plaintiff refused to take either course. At this time the mortgaged property was sufficient to cover the first mortgage and the sum paid by the plaintiff; but when this action was begun it had become so depreciated in value as to be insufficient to cover the first mortgage.

Held, that the defendant was not relieved from liability by the plaintiff's neglect or refusal to sell the mortgaged property. The plaintiff, having paid the debt, stood in the creditor's place as a creditor of the defendant.

Re Parker, (1894) 3 Ch. 400, followed.

Chrysler, Q.C., for the plaintiff.

McCarthy, Q.C., for the defendant.

FIRST DIVISION COURT, MIDDLESEX.

MACKENZIE, Co. J.]

[June 19.]

BURNS v. LONDON STREET R. W. CO.

Accident—Contributory negligence.

The plaintiff's dog ran across the track within ten or fifteen feet of an approaching car. The car was moving at an immoderate rate of speed.

Held, that the case came within *Hay v. G. W. R. W. Co.*, 37 Q.B. 465, and the action of the dog was the cause of its death, and therefore the plaintiff could not recover.

MACKENZIE, Co. J.]

[June 19.]

WOODS v. CANADIAN PACKING CO.

Contract—Incomplete and not binding.

Action for damages for non-acceptance of one deck load of hogs.

On 9th July defendants wrote to plaintiffs the prices they would pay for hogs (as described), to be delivered on 19th inst., and add, "Kindly wire us right away if you will accept this offer." Next day plaintiff replied: "Offer satisfactory, but hogs are scarce, and it would be difficult to get up a load; however, I'll try to get a deck for you by the date mentioned. Will write you again later." The plaintiff did not accept the offer.

Held, that there was no mutuality, and no completed binding contract.

Harvey v. Facey, 1 Rep. 426, referred to.