

[Ct. of Ap.]

NOTES OF CASES.

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between the parties was in effect, that the company might have the land for nothing if they should place a station upon it. This they did, and thereby complied with the condition, but the Court did not think that they were compellable to keep the station there for ever, but that if such relief had been asked, re-possession would have been decreed to the plaintiff, the company having no ownership of the land, except in connection with the employment of the same for the designad purpose and could not use the said land for any other purpose.

*Bethune, Q.C.*, for plaintiff.

*S. H. Blake, Q.C.*, for defendants.

[From C. P.]

[March 24.]

BIRKETT ET AL. V. MCGUIRE ET AL.

*Principal and surety—Giving time—Partnership—Appropriation of payments.*

The judgment of CAMERON, J., reported in 31 C. P. 430 (noted *ante infra*, vol. 17, p. 63), reversed. A partnership having been dissolved, one partner continued the business and assumed the debts of the firm, and, as between himself and the retiring partner, became the principal debtor, of which facts the plaintiff as creditor had notice. *Held*, that as the relationship was not originally one as between principal and surety, and not changed into a liability of that nature by the creditor, his giving time to, or taking a negotiable security from, the continuing partner did not discharge the original co-debtor.

Discussion on the appropriation of payment in such case.

*Bruce* (Hamilton), for plaintiffs.

*Mackelcan, Q.C.*, for defendant.

[From Chy.]

[March 24.]

INTERNATIONAL BRIDGE CO. V. CANADA SOUTHERN RY.

CANADA SOUTHERN RY. V. INTERNATIONAL BRIDGE CO.

*Junior Counsel—Tolls—Practice—Reference to Master.*

The same points which had reference to the payment of tolls by the railway, for the use of the bridge being raised in both suits, they were argued together in the Court below, and the decree then made was now affirmed.

Junior counsel are not at liberty to take posi-

tions in argument, which conflict with the positions taken by their senior counsel. To require payment of tolls for the user of the bridge, is incidental to the corporate powers of a corporation of the character of the International Bridge Co.

The contention that the tolls are already fixed by statute is not sustained by an examination of statutes of the Bridge Co.

The percentage yielded to the shareholders upon their capital expended upon the bridge and its approaches, and other expenses incidental to the undertaking, is too narrow a test to take of the reasonableness of the tolls, especially in the case of such a construction as the bridge in question, it was right that a sinking fund should be set apart to answer expenses occasioned from time to time by accidents to the bridge.

Where a question is directly raised by the pleadings, and is one of the principal grounds upon which the plaintiff comes into Court, and is proper for the decision of the Court, to refer it to the master would be to transfer to him a question which is distinctly presented to the Court for its decision, and upon which both parties have given evidence in order to the obtaining of the judgment of the Court upon it, and therefore questions of this nature should not be made the subject of a reference.

*Crooks, Q. C.* and *Cattanach*, for defendants.

*S. H. Blake, Q. C.* and *W. Cassells*, contra.

[From Q. B.]

[March 24.]

FURLONG V. CARROLL.

*Fire—Negligence.*

The defendant, while working in his own field, threw a match, which he supposed he had extinguished, upon the ground, which set fire to some combustible matter. The fire could have been put out, but the defendant, after raking the materials together, left it to burn out, under the impression that he had confined it to one spot. After burning four or five days the fire communicated with the plaintiff's premises. The verdict of the jury was in favor of the defendant.

*Held*, reversing the decision of the Queen's Bench refusing a rule for a new trial, that the defendant was liable for the damage caused to the plaintiff, and a new trial was ordered without costs.

*Meek*, for plaintiff.

*Bethune, Q.C.*, and *Deroche*, contra.