McNEELY ET AL. v. McWILLIAMS ET AL.

Contract in writing—Parol Evidence—Admission of.

The defendants wrote plaintiffs: "We will furnish scows and deliver all the stone required for the Omemee Bridge as fast as you require them, for the sum of 75 cents per cubic yard." To which plaintiffs replied: "We accept the above offer at the price and conditions named."

Held, CAMERON, C. J., dissenting, that parol evidence was admissible to show that the delivery was only to take place provided the water along the route was of sufficient height to enable defendants to use their steamer in towing the scows.

G. T. Blackstock, for the plaintiff.

Osler, Q.C., for the defendant.

BANK OF MONTREAL v. DAVIS.

Voluntary conveyance—Fraudulent preference—Evidence of—Finding of judge on weight of evidence.

In an action to set aside conveyances made by a father, a merchant, to his two sons, as with intent to delay or defraud his creditors, it was found as a fact that at the time in question the father was in solvent circumstances, and owed no debt now unpaid except a sum of $1,000 to his wife for rent, and even if there were such a debt, and enforceable against the father, it never was enforceable against the property in question, as the wife joined in the conveyances; and consequently it was not available to the plaintiffs for the purpose of setting aside such conveyances.

Held, under these circumstances, that the action must fail.

In this case the Court refused to interfere with the finding on the weight of evidence of the learned judge who tried the cause, and had seen and heard the witnesses, though they felt a difficulty in arriving at the same conclusion.

Bruce, of Hamilton, for the plaintiffs.

Robertson, Q.C., for the defendant.

ILER v. ILER.

Board—Claim by relatives—Express agreement.

When brothers or sisters or near relatives live together as a family no promise arises by implication to pay for services rendered or benefits conferred, which, as between strangers, would afford evidence of such a promise; and so, in an action between relatives so living together for board or wages or the like, an express promise or agreement must be proved by the party urging the claim.

In this case, which was an action against a brother for board, no such promise or agreement was proved; and also for the greater portion of the time the house in which they lived was the mother's, and not that of the brother claiming the board, as by the father's will she was entitled to the use of the dwelling house during her life, and of the farm, cows and poultry, and the defendant being required to provide for her all that she should require.

Held, therefore, that the claim was not maintainable.

Aylesworth, for the claimant.

Pegley, contra.

DYMENT v. THOMPSON.

Sale of goods—Place of inspection—Acceptance of part.

The plaintiff, a lumber dealer and mill owner, agreed with the defendant to supply him with certain grades of lumber to be shipped on board cars at the stations nearest plaintiff's mills, and to be sent to the defendant at Hamilton; payment to be made by acceptance at three months from delivery. The lumber was shipped in car loads to the defendant from time to time, some of which the plaintiff accepted and others he rejected.

Held, that the plaintiff had the right of inspection at Hamilton, but having accepted certain of the car loads he had no right to reject the others because part did not answer the contract, unless the lumber they contained was so inferior in quality as to destroy the distinctive character of the whole of such loads; but that defendant must rely upon his action for damages, or give the inferiority in answer *pro tanto* to the claim.

McCarthy, Q.C., and *Pepler*, for the plaintiff.

Lount, Q.C., and *Kappele*, for the defendants.