

*Taylor v. Caldwell*, 3 B. & S. 826, followed.

*Harvey v. Murray*, 136 Mass. 377, approved.

*D. Macdonald* for the plaintiff.

*R. M. Macdonald* for the defendant.

Div'l Court.]

FRASER & BUCHANAN.

[March 3.]

*Provisional judicial district—Order of Master for trial of action therein—Subsequent judgment of High Court judge—Jurisdiction of Master—Appeal to the Court of Appeal and not Divisional Court.*

In an action brought for damages to the plaintiff's house situated in a provisional judicial district, an order was made by the Master in Chambers, assuming to act under the Unorganized Territories Act, R.S.O., c. 91, directing that the issues of fact be referred to the district judge, reserving further directions and questions of law arising at the trial for the disposal of a judge in single court. Notice of trial was given for the District Court, and the case heard by the district judge, who made certain findings of fact, assessed the damages, and directed judgment to be entered for the plaintiff. The plaintiff moved for judgment on such findings before a judge in single court, the defendant at the same time appealing from the judgment or report, whereupon, the judge disposed of both motions, directing judgment to be entered for the plaintiff for the amount found by the district judge.

On appeal to the Divisional Court,

*Held*, that, apart from the question of the jurisdiction of the Master to make the order, as the parties had treated it as valid, and the subsequent order of the judge in single court remained unreversed and unappealed, the court would not interfere; that if the question of the jurisdiction of the Master were involved, the appeal should be to the Court of Appeal.

*English* for the plaintiff.

*Aylesworth*, Q.C., for the defendant.

Div'l Court.]

MCLEOD & WADLAND.

[March 3.]

*Mortgage—Payment off of prior mortgages in ignorance of a third mortgage—Right to be declared third mortgagee—Laches—Acquiescence.*

The plaintiff paid off two prior mortgages on certain lands, and procured their discharge, taking a new mortgage to himself for the amount of the advance in ignorance of the fact of the existence of a third mortgage. Shortly afterwards he ascertained the fact of the existence of such third mortgage, when, believing the land to be sufficient to pay off both mortgages, he notified defendant, the third mortgagee, he would pay his off, and the defendant, relying thereon, took no steps to enforce his security. Subsequently, on the property becoming depreciated and the mortgagor insolvent, the plaintiff brought an action to have it declared that he was entitled to stand in the position of first mortgagee.