

C. of A.]

NOTES OF CASES.

[C. of A.]

Burton, J. A., and Blake, V.C.), reversing the judgment of the Queen's Bench that the entry was not admissible as one made in the course of business, or in the performance of a quasi-public duty.

*Held*, also, that extrinsic evidence could not be given to connect the two entries, and that even if the second entry were admissible as an entry against interest, it did not make the note of the survey evidence, as it was not referred to in it, or necessary to explain it.

*M. C. Cameron, Q.C. (J. H. Ferguson with him)*, for the appellants.

*McCarthy, Q.C.*, for the respondent.

*Appeal allowed.*

From Chy.]

[Dec. 17.]

YATES V. GREAT WESTERN RAILWAY COMPANY.

*Patent of Invention—Combination.*

The bill was filed to restrain the infringement of a patent. The invention was described as an "improved chair for preventing bolts or nuts from becoming loose or insecure." The specifications stated that this was accomplished by introducing the iron chair between the iron rails and the sleeper at the joints of the rails, and that the chair was constructed with a raised edge or lip extending over a part or the whole length of its surface, and that this lip was formed and made of a suitable shape and depth so as to be in constant contact with the heads or nuts of the bolts after they were placed in position and firmly screwed to the straps (fish-plates) and rails. It also stated, "It will be seen that the upper portion of the chair . . . forms a seat or check for receiving the sides of the nuts or heads of the bolts, and which will entirely prevent the bolts from working loose or dropping out of their places from the vibration of vehicles passing over rails or from other causes. The patentee claimed as his invention "the lipped chair in combination with the heads or nuts of bolts . . . for retaining and preventing the nuts from becoming loose." It was proved that the lipped chair, the fish-plate, and the bolt had all been used in combination before the issue of the patent; and although not so used for the purposes of the patent, still that result was attained when the nuts happened to be of a large size and came in contact with the lip.

*Held*, (Moss, C.J.A., Burton, J.A., and Blake, V.C.,—Patterson, J.A., dissenting) re-

versing the judgment of Spragge, C., that no matter how useful the contrivance might be, it could not be the subject of a patent, as it was wanting in the element of invention.

*Bethune, Q.C.*, for the appellants.

*Boyd, Q.C.*, and *Macmahon, Q.C.*, for the respondent.

*Appeal allowed.*

From Chy.]

[Dec. 17.]

BILLINGTON V. THE PROVINCIAL INSURANCE COMPANY.

*Fire Insurance—Non-disclosure of existing Insurances—Notice to Agent.*

The plaintiff applied to the defendants through one Suter, their local agent at Dundas, to effect an insurance on certain machinery for two months from the 6th of February, 1875. He signed the defendants' usual form of application, which contained an express agreement that it should form a part of the policy. In answer to the inquiry therein respecting other insurances, two existing policies were mentioned; but a third, which was in the Gore Mutual, was omitted, owing to the policy having been mislaid, and the plaintiff not remembering how much of it was on the machinery, and how much on the building in which the machinery was contained. The plaintiff was busy at the time, and wished Suter to wait until he could find it, as he was most anxious to have the amount inserted, but in order to facilitate the matter, Suter, through whom this policy had been effected as agent for the Gore, promised to ascertain the correct amount from a memorandum in his office, and fill it in before forwarding the application, or retain the application until he saw the plaintiff again. The application was, however, sent to the head office by Suter, without the omitted particulars, and was accepted by the board. No person connected with the Company had any knowledge of the insurance in the Gore Mutual except Suter. Suter's authority extended to renewing premiums and issuing interim receipts for policies. When the application was signed Suter gave the plaintiff an interim receipt for the premium, which stated, "that any existing}assurances must be notified in writing at the issuing of this receipt, or this [contract is void," and provided also that the policy should be subject