

HORAN v. McMAHON—DIVISIONAL COURT—MARCH 10.

Trespass — Boundary — Survey — Evidence — Onus — Injunction — Damages — Counterclaim.]—Appeal by the plaintiff from the judgment of RIDDELL, J., ante 224, dismissing the action and allowing the defendants' counterclaim. The action was in trespass to determine the boundary between two parcels of land in the township of Albion. The appeal was heard by FALCONBRIDGE, C.J.K.B., BRITTON and LATCHFORD, JJ. The judgment of the Court was delivered by BRITTON, J., who reviewed the facts and said that the onus was upon the plaintiff to establish beyond reasonable doubt that the disputed land was really part of the east half of lot 32 in the 5th concession; and in that the plaintiff failed. Appeal dismissed with costs. L. V. McBrady, K.C., and R. R. Waddell, for the plaintiff. W. D. McPherson, K.C., for the defendants.

BANK OF TORONTO v. BIER—FALCONBRIDGE, C.J.K.B.—MARCH 14.

Guaranty — Misrepresentations — Evidence — Findings of Jury.]—An action on a guaranty, tried with a jury. The defendants alleged that their execution of the guaranty was induced by fraudulent misrepresentations of an officer of the plaintiffs. The learned Chief Justice said that, as to the defendant Bier, the jury's answers followed his evidence and disclosed no defence. His case was allowed to go to the jury only because it was necessary to take their opinion as to the position of the defendants Massear and Chapin. As to these two defendants, the evidence adduced on their behalf would, if believed, have warranted findings of much more substantial misrepresentations. But the jury had chosen to confine their answers to a mere statement of opinion by the plaintiffs' manager, and had found, too, that such statement was not untrue to his knowledge; and the plaintiffs, therefore, succeeded. The pleadings had been closed against the defendant Bentham, and all the defendants, therefore, remained without defence. Judgment against all the defendants for \$4,000 and interest from the 5th November, 1910, and costs. M. K. Cowan, K.C., and A. G. Ross, for the plaintiffs. W. S. Brewster, K.C., for the defendants.

HULL v. ALLEN—SUTHERLAND, J., IN CHAMBERS—MARCH 15.

Reference—Stay—Delay—Death of Defendant—Institution of New Action—Non-payment of Costs—Reference not to Pro-