

Robson, J.]

SNIDER *v.* WEBSTER.

[Jan. 30.]

*Vendor and purchaser—Damages for breach of covenant to convey land—Vendor's lien.*

When a vendor of land has received the amount of the purchase price agreed on and covenanted to convey with a clear title within a time limited, the measure of damages in case of an absolute failure to convey the land is the amount of the consideration paid with interest, whether the land has increased or diminished in value in the meantime. Dart on Vendors and Purchasers, 801, and Mayne on Damages, 250, 251, followed.

That the consideration mentioned in the deed and acknowledged by the defendant to have been received was not actually cash, but only lands received in exchange at a valuation agreed on, makes no difference if such lands have actually been conveyed by the plaintiff to the defendant, and the plaintiff is also, in such a case, entitled to a lien on the lands so conveyed for the amount at which they were taken in the proposed exchange.

*Ferguson, K.C., for plaintiff. Galt, K.C., for defendant.*

Referee.]

[Jan. 31.]

WESTERN CANADA FLOUR MILLS CO. *v.* CANADIAN PACIFIC RY. CO.

*Practice—Third party—Defendants' claim against, founded on tort.*

The rules of court providing for a defendant bringing in a third party to contest the plaintiff's claim, Nos. 246 and 249 of the King's Bench Act, do not extend to a case in which the defendant's claim against the third party is founded on tort. The defendants, therefore, being called upon to account for a car load of wheat received from the plaintiffs to be shipped on their line, could not bring in, as third party to the action, another company which it was alleged had wrongfully got possession of the wheat and disposed of it. *Gagne v. Rainy River Lumber Co.*, 20 O.L.R. 433, followed.

*Hamilton, for plaintiffs. Curle, for defendants. Montague, for third party.*

Robson, J.]

WILSON *v.* STUART.

[Jan. 30.]

*Joint debtors—Effect of taking judgment against one of two or more.*

Rule 585 of the King's Bench Act, as amended by s. 12 of c. 12, of 7 & 8 Edw. VII. permitting judgment to be signed