

secretary of a syndicate, formed for the purpose of completing the Hamilton and Dindas Street Railway, in favor of O., S. and the defendants, was by them endorsed to the Canadian Bank of Commerce. On the day the note fell due O. and S. paid the same, S., at the time of so doing, directing the bank to endorse it to the plaintiff, who gave no consideration therefor. This was accordingly done, and the present action brought against the defendants as endorsers of the note.

Held, as a fact that S. by his payments, intended to satisfy the note; and therefore the plaintiff by this endorsement to him took just such rights as S., after such payment, had with respect to the note, and that inasmuch as the defendants were co-partners with S. in the above mentioned railway undertaking, and the note was made for a purpose directly relating to and not in a matter merely collateral to the partnership, they were not liable to S. in an action against them as endorsers, and so therefore the plaintiff could not recover against them.

In an action by a third person holding for the benefit of a joint endorser against his co-endorsers who are sued as endorsers, such joint endorser cannot claim contribution under R. S. O. ch. 116, secs. 2, 3, and 4, for he should sue each of the defendants separately for his share of the contribution, and not the two jointly, and should also declare specially for that proportion of contribution, and should not sue the defendants as endorsers for the full amount of the note.

Held, further, that the statute above referred to, is not applicable to partnership transactions.

Ferguson, Q. C., for the plaintiff.

Bruce, for the defendants.

JOHNSTON v. CHRISTIE, J. SKINNER,
P. SKINNER & FOYLE.

Trespass to land—Title.

Plaintiff agreed in writing on 18th Nov. 1878, with one Q. agent for St. G. to purchase the land in question. Q. had a power of attorney from his principal to protect and lease but not to sell and convey lands. Plaintiff paid one instalment only of his purchase money to Q. who said he had forwarded it to St. G. who had ratified the bargain. On the Monday after the 18th Nov. 1878, plaintiff went on the lot with Q's permission, and cut and removed some timber

The defendants, Christie and J. Skinner, cut timber on the land under a mistake as to boundaries, but after the limits were ascertained offered plaintiff compensation for this, though Christie swore he meant his offer to be for plaintiff's interest in the lot. They also had offered to buy timber from the plaintiff.

Held that there was sufficient evidence of title to constitute the acts of entry made by the plaintiff on the land constructive possession.

It was objected that being in default to St. G. on his agreement and time being made thereby essence of the contract, the plaintiff's title had expired. But,

Held that the defendants, not claiming under St. G. could not set up his right to avoid the agreement.

It was suggested that St. G. might still be in a position to bring an action for the same trespasses, and it was therefore ordered that the rule should not issue until a release from St. G. to the defendant against whom the verdict went as to the trespass in question, should be filed.

The proceedings were irregular as against J. Skinner and Foyle and the verdict against them was set aside.

Lount, Q. C. for plaintiff.

McCarthy Q. C. for defendant.

CARTER v. HATCH.

Investing money on mortgage—Breach of duty—Onus of proof—Pleading.

It is *prima facie* a breach of duty in a person entrusted with money, to invest on the security of a second mortgage, however good that security may apparently be; and the *onus* is on the defendant to prove that the plaintiff authorized such investment. Where the agent to invest derives his profits, not from the lender, but from the borrower, the proper mode of stating the consideration is to aver, that in consideration the plaintiff *would deliver to the defendant the sum &c. to be invested by him for the plaintiff upon good and sufficient security upon real estate, so as to enable defendant to charge the borrower of the money for his services in the premises*, the defendant promised, &c.

Dunbar, for plaintiff.

J. E. Rose, for defendant.