

Com. Pleas.]

NOTES OF CANADIAN CASES

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that M., by fraudulently representing to defendant that the price he (M.) paid for the land was \$50,000, whereas it was only \$31,000; that the land was well worth that sum; was suitable for being laid out as town lots, and that it could be readily sold at largely remunerative prices, induced the defendant, who resides in Toronto and had no knowledge or means of acquiring knowledge, but relied on the truth of his statement, to enter into the agreement. The defendant, in consequence, asked to have the agreement and note rescinded.

Held, that M. was not in a position alone to put an end to the agreement and have the note cancelled, for that the so-called syndicate was in fact a partnership, and as the fraud was that of M. and not of the partnership, it would not avoid the agreement so long as all the partners were not asking for its rescission; and that the defendant's remedy must be by cross-action or counterclaim for deceit.

J. H. Macdonald, for the plaintiff.

McMichael, Q.C., for the defendant.

McFARLANE V. GILMOUR.

Tramway—Accident—Negligence of fellow-servant.

The defendant, the proprietor of extensive mills, constructed a tramway to carry lumber from one end of his yard to the other; but defendant's employees were permitted, for the purposes of their employment, to use the cars, which were drawn by a steam engine. The track was laid on ties placed on wet ground not very carefully prepared and very little ballasting done, and none where the accident happened. The plaintiff, one of the defendant's employees, was on one of the cars going to where he had some work to do, when the car was thrown off the track and the plaintiff was injured. It was attempted to be shewn that the accident was caused by the faulty construction of the road; but the evidence shewed that the cause was through a rail having been misplaced. It was proved that the defendant employed a competent foreman, who delegated the duty of keeping the track in repair to one B., a fellow-servant of the plaintiff, and, so far as appeared, was fully competent to perform such duty; and that B. neglected to replace the rail.

Held, that the accident having been caused

by the negligence of a fellow-servant, the defendant was not liable.

Dickson, Q.C., for the plaintiff.

Bell, Q.C., for the defendant.

CANADIAN PACIFIC R. R. CO. v. GRANT.

Railways—Carriage of goods—Delay—Damages.

The plaintiffs sued defendant for \$2,700, the balance alleged to be due on the carriage of timber to Quebec. The defendant counter-claimed for damages, sustained by reason of the plaintiffs' neglect and delay in furnishing cars as soon as notified that defendant's timber was ready, whereby defendant was delayed in loading and forwarding his timber to Quebec. The defendant also claimed damages for plaintiffs' neglect in forwarding cars to carry some 600,000 feet of timber, part of the contract; and also for loss of value of timber by reason of its being kept over until the following year; and expenses caused by the delay in carrying quantity carried.

Held, affirming the judgment of the learned Judge at the trial, that on the evidence plaintiffs were entitled to recover the \$2,700 claimed by them; and that the defendant was entitled to recover \$1,420 damages under his counter-claim for the delay in loading after notification; but was not entitled to recover any of the other items of damages claimed. Each of the parties to be entitled to costs as if the claim and counter-claim were a separate action.

Bethune, Q.C., and *McTavish*, for the plaintiffs.

McCarthy, Q.C., and *T. S. Plumb*, for defendant.

WEBSTER V. LEYS.

Married women—Next friend.

In an action by a married woman, commenced before the O. J. Act, it was held on demurrer that the plaintiffs must sue by next friend, and an order was made out accordingly. Subsequently and after the passing of the O. J. Act, the next friend became insolvent. On an application to *PROUDFOOT*, J., for the appointment of a new next friend, he made an order for such appointment, holding that he was bound by the previous order, and that nothing was shewn entitling the plaintiffs to take the benefit of the provisions of the O. J. Act.