

Q. B. Div.]

NOTES OF CANADIAN CASES.

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gagee might take the goods if the mortgagor attempted to sell, dispose of, or part with the possession of the goods.

Held, that the mortgagee had the right, under the circumstances, to take the goods, although default in payment had not been made.

J. W. Kerr, Q.C., for the plaintiff.

McPhillips, for the defendant.

WHITEMARSH V. VAN EGMOND.

Award—Fraud.

Disputes having arisen between the plaintiff and defendant upon a building contract, the plaintiff wished to have the value of his work for the defendant referred to arbitration. The defendant, who claimed that work was not finished according to contract, agreed only to refer the question whether or not the work had been finished according to the plans and specifications in the contract, and that any submission to be drawn was to be referred to his solicitor, and approved by him before he would execute it. The plaintiff procured a bond to be drawn and sent to the defendant's solicitor, who disapproved of it, as it left the whole matter open to arbitration, and referred it to the plaintiff's solicitors. The latter acting on the instructions of the plaintiff's agent, who was informed of the disapproval, engrossed the bond, and the plaintiff's agent took it to the defendant and procured his signature by leading him to believe that it had been approved. After an award was made thereunder the defendant discovered from his solicitor, for the first time, that he had never approved of the submission, and immediately repudiated it.

Held, [reversing the judgment of GALT, J.] that an action on the award would not lie.

Oster, Q.C., for the plaintiff.

Bethune, Q.C., for the defendant.

WILBY V. STANDARD INSURANCE CO.

Fire insurance—Encumbrances—Misrepresentation—Divisible condition.

A fire policy contained a condition, in addition to the statutable conditions, to the effect that if the property were alienated, or any transfer or change of title occurred, or if it were incumbered by mortgage without the consent of the company, or if the property should be

levied upon under process of law, the policy should cease. In answer to the question whether the property was mortgaged, the assured answered, "\$5,000 to F. L. & S. Co." There were at the time, in fact, two mortgages to that company. After the policy a mortgage was given to secure endorsements, and was discharged, and another was given by the plaintiff to his partners, who retired from the firm, but the company was not apprised of either. The jury found that the representations as to incumbrances were false, and a verdict was entered for the defendants.

Held, that the representations as to incumbrances was a violation of the condition, and that the verdict was right.

Per HAGARTY, C. J.—Though that part of the condition as to levying might be unreasonable, (5 App. R. 605), the remainder was not, and the condition is divisible.

REGINA EX REL BRINE V. BOOTH.

Municipal Act—Liquor license—Councillor—Partnership.

The defendant and his brother were carrying on business as Booth Bros., and had a license in the name of the firm to sell intoxicating liquors. Before the nomination of members of the Parkdale council the defendant, with the consent of the license commissioners, transferred his interest in the license to his brother in order to qualify as a councillor, but the business continued as before.

Held, [affirming the decision of the Master in Chambers,] that a license cannot lawfully be transferred except in the cases mentioned in R. S. O. cap. 181, sect. 28, none of which had occurred here. That the consent of the commissioners did not validate the transfer, and therefore that the defendant, who retained his interest in the license, was not qualified to be a councillor.

Per ARMOUR, J.—The Act disqualifying a licensee should be construed strictly, and its effects should not be extended to the partner of a person lawfully holding a license in his own name.

Shepley, for the appeal.

Ayleworth, contra.