The question of fact to be determined is, whether the road, having regard to all proper considerations, was in a state reasonably safe and fit for the ordinary travel of the locality.

The case coming on as it did, before this Court, the question of a new trial was left untouched. See *Hamilton* v. *Myles*, 24 C. P. 325.

Donovan, for plaintiff.

J. K. Kerr, Q. C., for defendants.

Spragge C.] [March 26.

LIVINGSTONE v. WOOD.

Appeal upon questions of fact—Balance of testimony.

The Court below, having found upon the evidence (27 Gr. 515) that the plaintiff was entitled to redeem a bond for $4,000, assigned to the defendant to secure $2,000, the defendant giving a separate agreement to re-assign on payment of the loan and interest;

Held, that though the evidence as printed appeared to favor the defendant's view, yet not to such an extent as to show clearly that the learned judge who saw the witnesses was wrong, the decree should not be disturbed.

Osler, Q. C., for the appellant.

W. Cassels, for the respondent.

Proudfoot, V. C.] [March 26.

BLAKE v. KIRKPATRICK.

Contract of hiring—Rescission of contract.

The plaintiff agreed with the defendant to serve him as manager of a tannery for six years, the agreement reciting that he was a practical tanner and was to manage the works, while the defendant was to furnish the capital. He also agreed to disclose to the defendant a secret way of tanning, which defendant was not to use after the agreement, except in connection with plaintiff, and the secret process was to be carried on in the works.

The defendant discharged the plaintiff in about seven months, alleging among other things that he was not a practical tanner, that he was not using the secret process, and that he had not disclosed that process to the defendant.

Held, reversing the judgment of PROUDFOOT, V. C. (27 Gr. 86), upon the evidence that the plaintiff was a practical tanner within the meaning of the agreement; that the manufacture of leather was being carried on according to the secret process, and that as no time was limited for disclosing the secret process the plaintiff was not in default, and therefore the defendant, who had never asked for the disclosure, had no right to dismiss the plaintiff for non-disclosure. A reference was therefore directed as to the damages sustained by the failure of the defendant to perform his part of the agreement, and for the dismissal.

W. Cassels, for the appellant.

McMichael, Q. C., for the respondent.

Proudfoot, V. C.] [March 26.

DUFF v. THE CANADIAN MUTUAL INSURANCE COMPANY.

Mutual insurance companies—Separate branches—Guarantee capital fund—Liability of policy holders.

The defendants, a mutual insurance company, had divided their business into several branches, pursuant to the Act, and had raised a guarantee capital fund. All losses were paid out of the guarantee fund. In two branches in which the policies were cancelled, it was proved that the amounts to be collected on the premium notes would not pay the losses in those branches.

Held, affirming the decision of PROUDFOOT, V. C. (27 Gr. 391), that the policy holders in the solvent branches were not liable in respect of any sums paid for losses appertaining to other branches, but merely for the balance of any which may be found due from them respectively for moneys paid out of the guarantee fund for their losses and expenses.

Semble, that whether the power of assessment was to be exercised in the discretion of the directors, or was obligatory upon them, it is not in the power of the Court of Chancery to do what the Directors might or should have done.

Duff, for plaintiff.

E. Martin, Q. C., *R. Martin*, Q. C., *Osler*, Q. C., *Gibson*, and *Laidlaw*, for defendants.
