From Falconbridge, J.] [March 16.

JAMIESON *v.* LONDON AND CANADIAN LOAN COMPANY.

*Landlord and tenant—Lease—Assignment—Mortgage—Discharge.*

It having been held in a former action between the parties (27 S.C.R., 435) that the defendants were, under the assignment of lease by way of mortgage there in question, assignees of the term and liable on the covenants in the lease contained, it was now

*Held* that they were entitled to execute a statutory discharge of the mortgage and thus put an end to their liability, the assignment to them having been made to the lessor's knowledge for a limited purpose. Judgment of FALCONBRIDGE, J., reversed.

*Robinson*, Q.C., and *Arnoldi*, Q.C., for appellants. *Aylesworth*, Q.C., and *W. C. Irving* for respondent.

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From Street, J.] [March 16.

STRATFORD GAS COMPANY *v.* CITY OF STRATFORD.

*Contract—Impossibility—Damages.*

No action lies for the non-performance of a contract which on its face is impossible of performance.

Where therefore a contract was made for the electric lighting of a city for a named number of nights before a fixed date at a fixed rate per light per night and there were not as many as the named number of nights before that date, the city was held not liable to pay at the contract rate for the difference in number between the named number and the actual number. Judgment of STREET, J., affirmed.

*Woods*, Q.C., for appellants. *Idington*, Q.C., for respondents.

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GORDON *v.* UNION BANK OF CANADA.

*Bankruptcy and insolvency—Assignments and preferences—Payment of money—Cheque.*

A trader in insolvent circumstances sold his stock-in-trade in good faith and directed the purchaser to pay as part of the purchase money a debt due by the trader to his bankers, who held as collateral security a chattel mortgage on the stock-in-trade. The purchaser had an account with the same bankers and gave to them a cheque on themselves for the amount of their claim, there being funds at his credit to meet the cheque.

*Held*, that this was a payment of money to a creditor and not a realization of a security, and that the bankers were not liable in a creditor's action to account for the amount received.

*Davidson* v. *Fraser*, (1896) 23 A.R. 439, 28 S.C.R. 272, distinguished on the ground that the cheque never was the property of, or under the control of, the insolvent.

Judgment of ARMOUR, C.J., affirmed.

*Watson*, Q.C., and *A. C. MacMaster* for appellants. *Dyce Saunders* for respondents.