

the husband in favour of P., and endorsed by the wife, but on the express agreement that certain of the husband's property should be returned to him.

*Held*, that P. was entitled to recover the amount due him by virtue of the assignment.

*McKibbin v. Feggan*, 30 C.L.J. 33, commented on.

*Darling v. Rice*, 1 A.R. 43, distinguished.

*W. R. Riddell* for the plaintiff.

*Wallace Nesbitt and Stetson* for the defendants.

Div'l Court.]

BROWN v. DEFOE.

[Jan. 6.

*Warehouseman—Collapse of warehouse through undiscovered defect—Dry rot—Liability.*

A building erected for a billiard table manufactory, and used as such for nine years, was converted into a warehouse and used as such for about nine months, when it collapsed through the breaking of a beam supporting the ground floor, occasioned by there being dry rot in one of the beams, and a quantity of goods stored therein was damaged. No negligence was shown in the construction of the building or the selection of the material used therein, or in not discovering the existence of the dry rot; and except therefor the building would have been capable of sustaining the weight put upon it.

In an action for the damages sustained to the goods warehoused in the building,

*Held*, that the defendant was not liable.

*W. H. Blake* for plaintiff Ashdown.

*M. E. Irwin* for Brown.

*A. C. Macdonell* for Page.

*W. R. Meredith, Q.C.*, for the defendant.

Div'l Court.]

GRANT v. ARMOUR.

[March 3.

*Hire of goods—Agreement to return—Contract—Damage occasioned by unforeseen accident—Liability.*

Where there is a positive contract to do a thing not in itself unlawful, the contractor must perform it or pay damages for non-performance, although in consequence of unforeseen causes the performance of the contract has become unexpectedly burdensome or even impossible.

Where, therefore, the defendant had hired the plaintiff's scow and pile driver, etc., at a named price per day, and to be responsible for damages thereto, excepting the engine and ordinary wear and tear, until returned to the plaintiff, and while in the defendant's custody, by reason of a wind storm of unusual force, almost amounting to a hurricane, they were driven from their moorings and damaged:

*Held*, that the defendant was liable for the damages thus sustained, notwithstanding they were occasioned by an unforeseen accident, the plaintiff being liable also for the rent while the scow, etc., were being repaired.