

C. of A.]

NOTES OF CASES.

[C. of A.]

Spragge, C.]

[Sept. 25]

DOMINION LOAN SOCIETY V. DARLING.

*Mortgage—Rectification of—Weight of Evidence.*

The plaintiffs sought a ratification of the description of the premises, covered by a mortgage executed to them, by including therein the water lots and dock property in front of the lots described in the mortgage. The plaintiffs relied wholly on parol evidence, while the documentary evidence was entirely in favour of the defendants.

*Held*, affirming the decree of SPRAGGE, C., that no case was made for a reformation of the mortgage.

*Meredith*, Q.C. for the appellant.

*Ferguson*, Q.C., and *Bain*, for the respondents.

*Appeal dismissed.*

C. C. Huron.]

[Sept. 25.]

COLBERT V. HICKS.

*Malicious arrest—Reasonable and probable cause—Variance.*

The declaration alleged that the deposition was that the harness in question was stolen by the plaintiff, whereas it was proved that the statement in the information was qualified by the addition of the words "as he supposed."

*Held*, affirming the judgment of the County Court, no variance.

The defendant swore that the information was laid by him on the advice of the magistrate, and that he did not interfere in the issue of the warrant for the plaintiff's arrest; but the magistrate proved that the information contained the substance of the statements which the defendant made.

*Held*, that under these circumstances, as there was an absence of reasonable and probable cause, the defendant was liable.

*Ferguson*, Q.C., for appellant.

*H. Becher*, for the respondent.

*Appeal dismissed.*

C. C. York.]

[Sept. 25.]

COOPER V. BLACKLOCK.

*Promissory note—Authority of agent to sign.*

Upon the insolvency of J. B., who car-

ried on business under the name of Blacklock & Co., his wife purchased his estate from the assignee. The business was continued under the same name, and was entirely managed and controlled by J. B. for his wife, who empowered him by power of attorney to manage the business, and *inter alia* to make promissory notes on and about her said business.

Being pressed by a creditor for payment of a note, which he had given before his insolvency, and which was still undischarged, he gave him a note signed B. & Co., per pro. J. B.

Subsequently he was sued for the amount of this note, when he swore that it was his wife's note, and made with her authority, whereupon the holder sued the wife.

At the trial she swore that she had separate estate, and that she had purchased the estate with it, but on the advice of her counsel, she declined to give any information concerning it. She said that J. B. had no authority to give the note in question; but it appeared, that he frequently discussed his own affairs with her, and he would not swear that he did not tell her that he had given the note in question.

*Held*, affirming the judgment of the County Court, that notwithstanding the power of attorney, the real scope of J. B.'s agency could be ascertained from any admissible evidence, and that there was sufficient evidence to justify the finding of the judge that J. B. had authority to sign the note sued on.

*Ferguson*, Q.C., for appellant.

*McMichael*, Q.C., for respondent.

*Appeal dismissed.*

GREET V. MERCANTILE INS. CO.

The question put by the company in this case was, "Is there any incendiary danger threatened or apprehended?" which was answered in the negative.

*Held*, affirming the decree of SPRAGGE, C., that this was also a misrepresentation which avoided the policy.

*Held*, also, that the insurances were avoided by the non-disclosure of the insurance in the Phoenix Insurance Co., which, under the