

Ct. of App.]

NOTES OF CANADIAN CASES.

[Ct. of App.]

From Proudfoot, V.C.]

[Feb. 6.]

GOODERHAM V. TORONTO AND NIPISSING
RAILWAY CO.*Receiver, payments by—Accounts.*

A receiver of a railway having been appointed, who after paying the working expenses of the road was directed to pay any balance remaining in his hands periodically into Court, and an account having been directed of all liens, charges and incumbrances existing on the undertaking, and the moneys so paid into Court having been ordered to be applied in payment of such liens, etc., according to priority.

Held, [affirming the ruling of PROUDFOOT, V.C.] that in taking such account the receiver should have been allowed for all payments made on account of working expenses, which were not payable until after his appointment, but not those past due at that time; these being payable out of the moneys directed to be paid into Court.

MacLennan, Q.C., and *Kingsford*, for appellant.

R. M. Wells, and *W. Cassels*, for respondents.

From Proudfoot, V.C.]

[Feb. 6.]

CANADA LANDED CREDIT CO. V. THOMPSON.

New trial—Conflict of evidence—Erroneous view of law.

Where there was a conflict of evidence, and the learned judge who tried the case attributed greater weight to the evidence of some witnesses than to that of others, but in the opinion of this Court took an erroneous view of the law, this Court refused to make a decree upon the mere perusal of the evidence, and remitted the case to the Court below for a new trial.

McCarthy and Creelman, for the appellant.

W. Cassels, for the respondents.

From Div. Ct. Leeds and Grenville.] [Feb. 6.]

WILTSIE V. WARD.

Claim ascertained by signature—Division Courts Act, 1880.

By the Division Courts Act, 1880, the Division Courts have jurisdiction in actions for debt where the same does not exceed \$200, and the amount or original amount is ascertained by the

signature of the defendant. In this case the claim was upon the following document: "Received from R. W. an order for C. B., ordering me to pay him the sum of \$140, which is accepted on the following conditions, providing he carries out his agreement with me as cheesemaker. (Signed), M. W."

Held, that the Division Court had no jurisdiction, because the writing did not ascertain the amount, inasmuch as it depended upon the happening of certain events with respect to which evidence had to be adduced.

George Macdonald, for the appellant.

Falconbridge, for the respondent.

From C. P.]

Feb. 6.]

DEVANNEY V. BROWNLEE.

Promissory note—Accommodation maker—Principal and surety—Renewal—Discharge of surety.

A married woman signed a note in blank, and gave it to her son "to be used as he liked." He filled it up for \$1200, signed it, and transferred it to the plaintiff, who was not made aware of the circumstances under which it had been signed. It was renewed twice without the married woman's name, the original note remaining in the plaintiff's hands.

Held, [reversing the judgment of the Court below], that the married woman was a surety in respect of the note for her son, and that the authority to the son as to using the note, did not extend to keeping it afloat after maturity without her knowledge, and that she had been discharged by the extension of the time for payment.

McClive, for the appellant.

Bethune, Q.C., for the respondent.

From Spragge, C.]

[Feb. 9.]

SMITH V. THE MERCHANTS' BANK.

Warehouse receipts—Banks.

Held, on appeal, [reversing the decree as reported, 28 Gr. 629,] that to bring a transaction within section 46 of the Dominion Banking Act of 1871 (34 Vict. ch. 5) there must be three persons concerned therein—the owner of the goods, some person filling the position of a keeper of a wharf, yard or other place, and the