

[Sup. Ct.]

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NOTES OF CANADIAN CASES.

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that sum and the amount paid on the mortgage less the sum already paid.

*Moss, Q.C., for appellants.*

*Robinson, Q.C., for respondents.*

[Ontario.]

MCLEAN V. WILKINS.

*Mortgagor and mortgagee—Assignment of mortgage—Purchase of equity of redemption by sub-mortgagee—Sale of same—Liability to account.*

M. executor of a mortgagee, assigned the mortgage to C., who brought suit for foreclosure, but settled such suit by assigning the mortgage to H., one of the defendants. Prior to this, the mortgage had been deposited with H. as collateral security for a loan to M. H. then purchased the equity of redemption which he sold for a sum considerably in excess of the claim of C. and his own claim. In a suit by H. to foreclose M.'s interest,

*Held*, reversing the judgment of the Court of Appeal (13 Ont. App. R. 467), and restoring that of the Common Pleas Division (10 O. R. 58), that H. as sub-mortgagee was bound to account to M. for the proceeds of the sale of the equity of redemption.

*Blake, Q.C., and Cassels, Q.C., for the appellants.*

*Moss, Q.C., for the respondents.*

[Quebec.]

ROBINSON V. CANADIAN PACIFIC RAILWAY.

*Damages—Misdirection as to solatium—New trial—Art. 1056 C. C.*

In an action for damages against a railway company brought by the widow of a servant of the company killed in the discharge of his work, the learned judge at the trial directed the jury that in assessing the amount of damages, if they found for the plaintiff, they might consider the nature of the anguish and mental sufferings of the widow and child of the deceased.

*Held*, reversing the judgment of the Court of Queen's Bench, Montreal, M. L. R., 2 Q. B. 25, that there was misdirection. Effect of Art. 1056, C. C., considered. (See 10 Leg. News, 241.)

Appeal allowed with costs, and new trial ordered.

*Scott, Q.C., and H. Abbott, for the appellants.*

*J. C. Hatton, Q.C., for the respondents.*

[Quebec.]

LEGER V. FOURNIER.

*Sale a remere—Term—Notice—Mise en demeure—Chose jugée—Improvements.*

*Held*, affirming the judgment of the Court of Queen's Bench, Montreal, M. L. R., 3 Q. B. 124, where the right of redemption stipulated by the seller entitled him to take back the property sold within three months from the day the purchaser should have "finished and completed" houses in course of construction on the property sold, it was the duty of the purchaser to notify the vendor of the completion of the houses, and in default of such notice, the right of redemption might be exercised after the expiration of the three months.

2. The exception of *chose jugée* cannot be pleaded where the conclusions of the second action are materially different from those of the first, and so, although the present respondent attempted to exercise his right of redemption in a prior action for a less sum than stipulated, it was held that the dismissal of the first action was not *chose jugée* as regards the present action offering to pay the amount and conditions stipulated.

TASCHEREAU and GWYNNE, JJ., were of opinion in this case that appellant was entitled to \$302 for improvements over and above the stipulated price, instead of \$40 allowed by the court below.

*DeLorimier, for appellant.*

*Laflamme, Q.C., for respondent.*