

(see s. 14 supra, sub-s. 6; R.S.O. 170, s. 13, s.-s. 6). Upon this point it was admitted that there had been no actual assignment, but the defendant company had agreed to sell to the new company and had let it into possession pending the completion of the purchase, and there was a provision for re-delivery of possession if the contract should be rescinded. The Court of Appeal held that this did not amount to a breach of the covenant, although if the covenant had extended "to parting with possession" there would have been a breach.

PRACTICE—STRIKING OUT STATEMENT OF CLAIM—ACTION TO SET ASIDE, JUDGMENT BY DEFAULT ON GROUND OF FRAUD—RULE 308 (ONT. RULE 639.)

In *Wyatt v. Palmer* (1899) 2 Q.B. 106, it is determined by the Court of Appeal (Lindley and Rigby, L.J.J.) that a party seeking to set aside a judgment by default on the ground that it was obtained by fraud, is not obliged to resort to the summary procedure provided by Rule 308 (Ont. Rule 639), but may bring an action. The court, however, intimates that where an action is brought, the court may, in a proper case, impose terms, e.g. the payment of the amount of the judgment into court to abide the result, as a condition of allowing it to proceed. In the present case such a term was not considered necessary because the defendant admitted that he was a secured creditor. A motion by the defendant to strike out the statement of claim was held to have been properly dismissed by Kennedy, J. It was also contended by the defendant that the statement of claim, in so far as it was founded on alleged malicious proceedings in bankruptcy by the defendant, was bad for want of an allegation of special damage, but the Court of Appeal was of opinion that the point, were it well founded, was not sufficiently clear to warrant the striking out of the statement of claim on that ground.

CRIMINAL LAW RESTITUTION OF STOLEN PROPERTY—CURRENT COIN OF THE REALM—LARCENY ACT, 1861 (24 & 25 VICT., c. 96) s. 100—(CR. CODE 838.)

Moss v. Hancock (1899) 2 Q.B. 111, is a case stated by justices. One Neale had been convicted of stealing from the respondent Hancock, his master, one gold five pound piece. The magistrates thereupon made an order that the £5 piece, which had been produced in evidence, should be restored Hancock. The £5 piece had been kept by Hancock in a cabinet, from which it had been