

large excavation or opening in it, through which water flowed and caused the damage.

A. E. Fripp, Ottawa, for plaintiff.

G. F. Shepley, K.C., for individual defendants.

J. H. Moss, for defendant corporation.

The judgment of the Divisional Court (BOYD, C., FERGUSON, J., ROBERTSON, J.) was delivered by

FERGUSON, J.—The trial Judge having dispensed with the jury and grappled with the whole case himself, the question is not whether there was evidence to go to a jury, but whether the conclusion of the Judge was correct. After a persual of the evidence I am of opinion that the water that did the injury did not come through the cutting made under the railway in the construction of the sewer by defendants, but was water that flowed over the railway dyke owing to a freshet, and in such a case the defendants are not liable.

Appeal dismissed with costs.

A. E. Fripp, Ottawa, solicitor for plaintiff.

Christie & Greene, Ottawa, solicitors for individual defendants.

Taylor McVeity, Ottawa, solicitor for corporation.

APRIL 10TH, 1902.

C. A.

PENNINGTON v. HONSINGER.

*Account—Items—Sale under Chattel Mortgage—Questions of Fact—
Appeal—Reversal of Findings.*

Appeal by defendants from order of a Divisional Court reversing order of FERGUSON, J., upon appeal from a Master's report.

Action for an account of dealings of defendants with property included in certain chattel mortgages made by plaintiffs. The property was brought to a sale under all the mortgages, conducted by defendant Honsinger, with the assent of defendant Baird. After the sale the former acquired all the rights and interests of the latter under his mortgages, and the proceeds of the sale, so far as they might be applicable to discharge and satisfy them.

The questions at issue were: (1) The right of defendant Honsinger to debit plaintiff with (a) \$200 paid to discharge a distress upon the mortgaged chattels for rent of the farm on which they were kept; (b) the bailiff's charges, \$20.76; (c) \$100 for costs of a replevin action arising out of the