

the draft, and obtained and paid over the moneys to the judgment creditor, but wrote refusing to accept the payment "in full," the judgment creditor was allowed to proceed for the balance.

*Day v. McLea*, 22 Q.B.D. 610, applied.

*John McGregor* for the appellant.

*Johnston*, Q.C., for the respondent.

From GALT, C.J.]

[April 20.

THE SCOTTISH-AMERICAN INVESTMENT CO. v. PRITTIE ET AL.

*Railways—Mortgage—Foreclosure—R.S.O., c. 170, s. 20 (25).*

A railway company took possession of certain lands under warrant of the County Court judge, and proceeded with an arbitration with the owners as to their value. The lands were subject to a mortgage to the plaintiffs, who received no notice of, and took no part in, the arbitration proceedings, and gave no consent to the taking of possession. An award was made, but was not taken up by either the railway company or the owners. The plaintiffs brought this action against the railway company and the owners for foreclosure, offering in their claim to take the compensation awarded, and release the lands in the possession of the railway company.

*Held*, that the railway company were proper parties to the action, and that the plaintiffs were entitled to a decree against all the defendants, with, in view of the offer, a provision for the release of the lands in the possession of the railway company on payment to the plaintiffs of the amount of the award.

*Per OSLER and MACLENNAN*, JJ.A.: S.s. 25 of s. 20, R.S.O., c. 170, applies only where the compensation has been actually ascertained and paid into court.

Judgment of GALT, C.J., reversed.

*W. Cassels*, Q.C., and *Lockhart Gordon* for the appellants.

*H. S. O'ler* for the respondents.

From County Ct. Essex.]

[April 20.

WINDSOR WATER COMMISSIONERS v. CANADA SOUTHERN R.W. CO.

*Municipal corporations—Assessments and taxes—Exemptions—Extension of town—R.S.O., c. 184, ss. 22, 54—Windsor waterworks—37 Vict., c. 79, ss. 11, 12.*

The defendants were the owners of vacant land in the city of Windsor, abutting on streets in which mains and hydrants of the plaintiffs had been placed. The defendants had a waterworks system of their own, and did not use that of the plaintiffs, though they could have done so if they wished. The commissioners imposed a water rate "for water supplied or ready to be supplied" upon all lands in the city, based upon their assessed value, irrespective of the user or non-user of water.