

LAMB v. FRANKLIN—FALCONBRIDGE, C.J.K.B.—JAN. 17.

Deed—Action to Set aside—Laches—Acquiescence.]—Action to set aside a conveyance of land to the defendant Franklin. The Chief Justice found the facts in favour of the defendants, and that there had been laches and acquiescence on the part of the plaintiff. Action dismissed without costs. H. L. Drayton, K.C., and G. Y. Smith, for the plaintiff. J. E. Farewell, K.C., and W. H. Harris, for the defendants.

MACDONALD v. WALKERTON AND LUCKNOW R. W. Co.—BOYD, C.—JAN. 17.

Contract—Railway Construction—Unpacked Frog—Compensation to Family of Person Killed—Default of Contractor—Indemnity.]—Action to recover \$5,655.45, balance alleged to be due on a contract to build a railway for the defendants. The defendants set up that under the contract it was the duty of the plaintiff to fill with standard wooden blocks the narrow places between rails at switches, etc., and that, owing to the plaintiff's neglect to perform his duty, one Clarke, a conductor of a train of the defendants, had his foot caught in an unpacked frog and was run over by a car and killed, whereby the defendants incurred legal liability to and paid Clark's representatives \$5,250, which they claimed to deduct from the amount due to the plaintiff, and they brought \$405.45 into Court, and asked to have the action dismissed. The Chancellor finds that the proximate cause of the conductor's death was the absence of the packing required by the Railway Act, R. S. C. 1906 ch. 37, sec. 288, and by the contract; that the amount of compensation paid was such as should be accepted as fair and reasonable, and so binding on the contractor; that there was a sufficient supply of available material provided by the defendants to pack the dangerous gaps; and that the contract covered such a case of indemnity as was presented. Action dismissed with costs; money in Court to be paid out to the plaintiff, unless the defendants seek to have it impounded to answer the costs. G. H. Kilmer, K.C., and J. A. McAndrew, for the plaintiff. I. F. Hellmuth, K.C., and G. A. Walker, for the defendants.

MCBAIN v. TORONTO R. W. Co.—DIVISIONAL COURT—JAN. 17.

Negligence—Street Railway—Damages—Joint Negligence of two Defendants—Costs.]—Upon appeal by the defendants the To-