

Held, that the defendants were entitled to say that the existence of the order was proved, but that the order for the destruction and the adjudication of destruction were two different things, and that in order to obtain protection the formal adjudication of destruction should have been proved, and that it was not necessary to quash a mere order for destruction.

The order spoken of in R.S.O. (1877), c. 73, s. 4, is an order in the nature of an original adjudication by the magistrate upon some matter brought before him by charge, complaint, conviction or otherwise, and not an order for the purpose of carrying out or enforcing such adjudication.

Judgment of the Common Pleas Division reported 16 O.R., 716) affirmed.

Oster, Q.C., and *A. W. Aytoun-Finlay* for the appellants.

G. T. Blackstock for the respondent.

[June 29.]

BETTS v. SMITH et al.

Contract—Tender—Incorporation of previous advertisement—Evidence.

This was an appeal by the plaintiff from the judgment of the Common Pleas Division, reported 15 O.R., 413, and came on to be heard before this court (HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A.) on the 20th of May, 1889.

The court allowed the appeal with costs, holding that the advertisements and requirements formed part of the contract, and that the plaintiff was not limited to his rights under the tender and acceptance, and a new trial was ordered.

Lount, Q.C., and *F. R. Powell* for the appellant.

Pigeon and *S. G. McGill* for the respondent.

[June 29.]

THE LONDON MUTUAL FIRE INSURANCE CO. v. JACOB AND GORDON.

Solicitors—Lien—Funds recovered in action.

Actions were brought by one G. against two insurance companies to recover losses occasioned by a fire. The actions were tried together, but one was dismissed with costs, and in the other the plaintiff recovered judgment. The defendants acted as G.'s solicitors in each action.

Held, reversing the judgment of ARMOUR, C.J., that the solicitors had no lien for the costs of unsuccessful action upon the fund recovered in the other, that fund not having been recovered or preserved by means of the costs incurred in the action which was lost, and the two actions not being so intimately connected as to be regarded one.

Macmillan for the appellants.

Jacob, one of the respondents, in person.

[June 29.]

MOORE v. JACKSON.

Contract—Married Woman—R.S.O., c. 32.

To entitle a plaintiff to recover judgment on a contract entered into by a married woman, it is necessary for him to show that at the time the contract was entered into by her she owned separate estate, in respect of which she is enabled by statute to contract.

The defendant, a married woman, endorsed certain notes held by the plaintiff, and wrote him the following letter:

"I hold 400 acres of land near W., which is worth \$33,000, and is all in my own name and right. By your renewing the note for \$1,500 and the one for \$600 I pledge myself solemnly to do nothing to affect my interest in the said lands either by deed or mortgage, unless said notes are paid to you in full."

The notes and the letter were proved at the trial and the examination of the defendant before the trial, in which she stated that at the time she signed the notes she owned property on her own account, was also put in. There was no evidence as to the date of the marriage of the defendant or as to the mode in which the property was held by her.

Held, reversing the decision of BOYD, C., that there was not sufficient evidence to entitle the plaintiff to recover.

E. D. Armour for the appellant.

Moss, Q.C., and *J. R. Roaf* for the respondent.

[June 29.]

HUTCHINSON v. CANADIAN PACIFIC RY. CO.
Railways—Negligence—Passenger.

This was an appeal by the plaintiff from the judgment of the Chancery Division, reported ante p. 93, and came on to be heard before this court (HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A.), on the 22nd and 23rd of May, 1889.