

Held, that what took place constituted a novation, and the defendants' were therefore entitled to claim against the plaintiffs the damages which the defendants had sustained through the breach of the contract, but that such damages must be limited to the damages arising from breaches occurring prior to the dissolution.

Aylesworth, Q.C., and *Cronyn*, for defendants. *R. D. Gamble*, and *J. F. Hellmuth*, for the respondents.

From Street, J.] MOORHOUSE *v.* KIDD. [May 5.
Principal and surety—Counter security—Right to enforce—Depreciation—Contribution.

Where the principal debtor gives to his sureties counter-security by mortgage of real estate, any of the sureties is entitled, after the principal debtor's default, to enforce the security without the consent or concurrence of the others, and it is not an answer to a claim for contribution by one surety who has paid the whole debt that the security has depreciated in value, and that the paying surety has refused to take any steps to enforce it. Judgment of STREET, J., 32 C.L.J. 680; 28 O.R. 35, affirmed.

McCarthy, Q.C., for appellant. *Aylesworth*, Q.C., for respondent.

From Boyd, C.] RICE *v.* TOWN OF WHITEBY. [May 5.
Municipal corporations—Highway—Obstruction.

A house which was being moved from one part of a town to another, was allowed to stand over night upon one of the streets, without a watchman or warning light. The plaintiff's horse while being driven past the house that night took fright and the plaintiff was injured. Some of the town councillors knew that the house was to be moved and that it had been left standing upon the street for the night.

Held, assuming that the house was an obstruction to the highway, there was not sufficient notice or sufficient lapse of time to impose liability upon the corporation. Judgment of BOYD, C., 33 C.L.J. 691; 28 O.R. 598, reversed.

C. J. Holman, for appellant, the third party. *Aylesworth*, Q.C., and *Farewell*, Q.C., for the town. *W. R. Riddell*, for respondent.

From Rose, J.] McMILLAN *v.* MUNRO. [May 5.
Registry law—Priorities—Mortgage for balance of purchase money.

The plaintiff agreed to sell a parcel of land, one-half of the purchase money to be paid in cash and the other half to be secured by a mortgage thereon. A deed and mortgage were prepared and executed, the cash payment made, and the deed delivered to the purchaser. The mortgage was delivered to the vendor's agent to be registered. The purchaser had obtained the cash payment from the defendant upon the security of a first mortgage upon the land in question, and this mortgage was prepared, executed and delivered before the execution and delivery of the deed, and was registered before the deed and before the mortgage to the plaintiff. Upon receiving the