

Q. B. Div.]

NOTES OF CANADIAN CASES.

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## QUEEN'S BENCH DIVISION.

JUNE 30.

LEIGHTON V. MEDLEY.

*Landlord and tenant—Covenant to keep up fences—Removal of fences—Waiver.*

*Seemle*, the removal of fences from place to place on a farm is not a breach of covenant to repair, and where a landlord took rent after knowledge of the fact he was held to have waived forfeiture.

*McCarthy*, Q.C., for plaintiff.

*Reeve*, for defendant.

WINFIELD V. KEAN.

*Malicious prosecution—Malice—Misdirection.*

Want of reasonable and probable cause does not, as a matter of course, establish the malice necessary to the action, and where the judge told the jury not to trouble with the question of malice except as inferable from want of reasonable cause, and that if the information was laid without proper cause it was laid maliciously,

*Hell*, misdirection.

*Pepler*, for plaintiff.

*Lount*, Q.C., for defendant.

GOODYEAR RUBBER CO. V. FOSTER.

*Sale of goods—Acceptance—Waiver of excess of goods ordered.*

The defendants, with knowledge that a consignment of goods was in excess of the quantity ordered by them, made no objection on that ground, though negotiation took place for a reduction in price, but took into stock 15 out of 25 cases sent. The other 10 cases remained in bond till they were sold to pay duties.

*Hell*, that the defendants had waived any objections as to the excess.

*Pearson*, for plaintiff.

*C. H. Ritchie*, for defendant.

ROBINSON V. HALL.

*Mortgage—Payment—Transfer—Trespass.*

A. became mortgagee of lands from B., who then sold the minerals, with right of mining, to defendant. On default in payment of the mortgage A. brought ejectment and issued writ of possession. On learning this defendant told B.

he must pay the mortgage or give him an order to do so, and retain amount from the price of the minerals. An agreement was drawn up that defendant should either pay the mortgage or take a transfer to save B., defendant to have credit therefor on the sale of minerals to him, when defendant paid the mortgage, though the price of minerals was not due. B. then gave plaintiff possession at a rental, and defendant, having obtained a transfer of the mortgage and judgment in favour of A., ejected plaintiff.

*Held*, that defendant's payment was virtually one by B., and discharged the mortgage; and as it had been made to save B. as well as himself, defendant could not in equity have enforced the mortgage against B. or plaintiff, who could claim damages for the trespass. ARMOUR, J., dissenting.

*Wallbridge*, Q.C., for plaintiff.

*Bethune*, Q.C., for defendant.

MCLELLAN V. MCKINNON.

*Conviction—Hard labour—Amendment of sentence by sessions.*

There is no power in the Sessions, under 32-33 Vict. cap. 31, sect. 68, to amend sentence in a conviction. They cannot, therefore, strike out "hard labour" from a conviction.

*H. J. Scott*, for plaintiffs.

*Beaty*, Q.C., for defendant.

EDGAR V. MAGEE.

*Bill of exchange—Statute of limitations—Point of commencement.*

Where a bill matured 1st December, 1875, and writ issued 1st December, 1881.

*Held*, that the statute began to run 2nd December, 1875, and action, therefore, began in time. CAMERON, J., dissenting.

*J. K. Kerr*, Q.C., for plaintiff.

*Bethune*, Q.C., for defendant.

LAROCHE V. O'HAGAN.

*Sale of vessel—Warranty—Breach—Loss—Damages.*

A vessel on sale to defendant by plaintiff was warranted to class B 1, and insurable for \$1,400, which the mortgage, securing the purchase money, covenanted to insure for. The craft