

C. P.]

NOTES OF CASES.

[C. P.]

CLOSE ET AL. V. BEATTY ET AL.

Carriers by water—Delivery of goods—Liability—Pleading.

Action to recover the value of certain goods shipped on board defendant's steamer to be carried to the port of Thunder Bay, on Lake Superior, and there delivered to the plaintiffs or their assigns, averring non-delivery.

Plea: That defendants carried the goods to Thunder Bay, and there being no person there on the plaintiffs' behalf to receive the goods or to whom notice of their arrival could be given, and no means of notifying plaintiffs who resided at a certain distance from Thunder Bay, the defendants, after waiting a considerable time, landed the goods at the only wharf at Thunder Bay, they having no wharf or warehouse of their own, nor was there any other warehouse where they could store the goods: that they were placed under the charge of the person having charge of the wharf so far as he would consent to take charge.

Held, affirming the judgment of Armour, J., that the plea afforded no defence to the action.

Robinson, Q. C., and Biggar for the plaintiffs.

McMichael, Q. C., for the defendants.

JOHNSTON V. WILSON.

Agreement—Statute of frauds—Sale of goodwill of hotel and furniture.

The plaintiff was the lessee of an hotel in the Village of Wingham, and had a license to sell liquors, and was owner of the furniture therein. In April, 1876, defendant came to Wingham and examined the premises, and negotiated as to the purchase of the plaintiff's lease goodwill, license, &c., and the furniture at a valuation; but nothing was done, and defendant left, promising to write. On the 2nd of May he wrote plaintiff, offering \$600 for plaintiff's right, and would take stuff at a valuation, and would pay \$1,500 down; or if plaintiff greatly claims it \$2,000. On May 4th, he again wrote, offering \$700 for right, including license, and would pay \$2,000 down, and balance in October, when certain notes he held would fall due. On the same day plaintiff telegraphed defendant that he would take \$700 for his right, \$2,500 down, and time for balance; but on May 8th he again telegraphed defendant that he would take \$700 for his right, defendant paying license, \$2,000 down, and time for balance. On the same day, defendant telegraphed in reply, "Yours re-

ceived; will take it." The defendant having refused to carry out the agreement, plaintiff sold out his right, &c., which only brought \$325, and also sold the furniture, &c., at valuation.

Held, that there was a sufficient contract within the Statute of Frauds; that there was no uncertainty in the expression, "time for balance," as the previous correspondence shewed that October was intended; and that the parol evidence sufficiently shewed what was intended by the word "stuff." The plaintiff was, therefore, held entitled to recover \$375, the difference between the \$700 and the price for which the goods were sold, but not to any damages on the furniture, as it had been sold at a valuation.

Robinson, Q. C., for the plaintiff.

Oster for the defendant.

SAMIS V. IRELAND.

Mortgagor and mortgagee—Judgment recovered by mortgagee for mortgage debt—What saleable under fi. fa. lands.

Where a mortgagee recovered judgment against the mortgagor for the mortgage debt, and a *fi. fa.* lands issued thereon, under which not only the equity of redemption in the mortgaged lands consisting of 25 acres of a certain lot, but also the remaining 75 acres of the said lot belonging to the mortgagor were sold, the mortgagee being the purchaser, the only consideration being the mortgage debt.

Held, that the sale was void as to the 75 acres.

Bethune, Q. C., and J. W. Kerr, for the plaintiff.

Boyd, Q. C., for the defendant.

SYLVESTER ET AL. V. MCCUAIG.

Claims for wharfage—Agreement to take stock in projected company to acquire vessel—Effect of.

The defendant and one H. who were interested in an engine, for the purpose of utilizing it, agreed that a steam vessel should be built and a company formed under the Ontario Joint Stock Companies' Act of 1874, with a capital of \$30,000 in shares of \$100 each, of which this vessel was to be the property. The vessel was built at Mill Point and registered in defendant's name, and several mortgages were given by him upon her. In March 1876, while the vessel was being finished, the plaintiff, at the solicitation of defendant and H, agreed to become a stockholder in the projected company and take \$500 stock upon their