

C. of A.]

NOTES OF CASES.

[Q. B.]

with the Judge to order the defendant to be imprisoned on proof of fraud, and no judge would do so in such a case as the present.

Mr. DALTON thought the issues in law had not been determined within the meaning of the Rule mentioned in the argument, and therefore set aside the notice of trial, but, as the point was new, without costs.

Order accordingly.

NOTES OF CASES.

IN THE ONTARIO COURTS, PUBLISHED
IN ADVANCE, BY ORDER OF THE
LAW SOCIETY.

QUEEN'S BENCH.

IN BANCO—HILARY TERM.

FEBRUARY 7.

ROBINSON V. FEE.

Trespass—Trover—Right to Crops—Licensee.

W. R., father of plaintiff, having made default in a mortgage on some land, the land was sold under decree of the Court of Chancery to the plaintiff. He failed to carry out the purchase, and the land was sold and conveyed to C. S., plaintiff contending that C. S. was his trustee in the purchase. Plaintiff subsequently executed a release to C. S., who sold to defendant, who, as plaintiff contended, had notice of plaintiff's claim. Some bargaining took place between plaintiff and defendant as to the purchase of the land from the latter, but it was not carried out. The plaintiff lived on the land with his father, and while this bargaining was going on harvested his crops and placed them in the barn, and shortly after a conversation with the defendant regarding the purchase he was turned out of possession and his crops seized by the sheriff under a writ of assistance issued in the Chancery suit to which he was no party. In an action of trespass *q. c. f.* and trover: *held*, under the facts more fully set out in the case, that plaintiff had a mere license to live on the land and had acquired no interest in the land or crops, and that the action would not be sustained.

Quære, had he a claim for work, services

and outlay on the land while the license lasted.

J. W. Kerr, for plaintiff.

Armour, Q. C., for defendant.

CHURCHER V. BATES.

Tax sale—Wrong lot sold—Improvements.

Where land was assessed by the wrong number of the lot, and the sheriff, at a tax sale pointed out the identical piece of land on which the taxes were properly payable and which was in fact the land assessed though called by the wrong number, and sold that land by the wrong number: *Held* that the purchaser was entitled, on ejection by the owner, to protection under 33 Vict., cap. 23, sec. 9, and to be repaid his purchase money and interest and subsequent taxes and improvements.

Meredith, Q. C., for plaintiff.

Glass, Q. C., for defendant.

MCMASTER V. KING.

Demurrer—Insolvent Act 1875, sec. 63.

Declaration on several promissory notes alleging that the debt was one for the enforcing of which defendant might be imprisoned, and setting out that the notes were given for goods bought when defendant knew himself to be insolvent and that the goods were obtained by false pretences, &c.

Plea that defendant had been discharged by a duly executed and confirmed deed of composition and discharge, and that defendants had had notice of all proceedings—had proved their claim as an ordinary one—had accepted composition notes, one of which had been paid.

Replication that the plaintiffs did not assent to the discharge.

Rejoinder setting out the proceedings in insolvency and plaintiff's conduct.

Held, on rehearing, by Harrison, C. J., and Armour, J., reversing the decision of Wilson, J., sitting in vacation, that the plaintiffs by their conduct as to the composition deed and accepting notes and payment under it, and by their silence respecting the nature of their debt were precluded now from saying that their debt was other than an ordinary debt which would have been discharged under the Act.

W. Macdonald, for plaintiff.

George Kerr, Jr., for defendant.