

of which persons using the highway could complain; that it was clear that the accident was not caused by the pole, but by the uncontrollable speed at which the horses were running away, and consequently that the plaintiffs were not entitled to recover damages for the injuries complained of in their action; and further, that the telephone company had been improperly impleaded and should therefore be reimbursed by the city for all costs incurred in consequence of having been so made a third party in the action. Appeal allowed with costs.

*Wilson, Q.C., for Bell Telephone Co. Aylesworth, Q.C., and Douglas, Q.C., for City of Chatham. Atkinson, Q.C., for respondent.*

N.S.]

KENT v. ELLIS.

[Dec. 7, 1900.

*Pleading—Conversion—Defect in plaintiff's title.*

In an action claiming damages for the conversion of goods, the plaintiff must prove an unquestionable title in himself, and if it appears that such title is based on a contract the defendant may successfully urge that such contract is void under the Statute of Frauds, though no such defence is pleaded.

It is only when the action is between the parties to the contract which one of them seeks to enforce against the other, that the defendant must plead the Statute of Frauds if he wishes to avail himself of it.

Judgment of the Supreme Court of Nova Scotia (32 N.S. Reports 459) affirmed. Appeal dismissed with costs.

*Newcombe, Q.C., and Sedgewick, for appellant. Code, for respondent.*

B. C.]

SUN LIFE ASSURANCE CO. v. ELLIOTT.

[Dec. 7, 1900.

*Voluntary conveyance of land—13 Eliz., c. 5—Solvent vendor—Action by mortgagee.*

A voluntary conveyance of land is void under 13 Eliz., c. 5, as tending to hinder and delay creditors, though the vendor was solvent when it was made, if it results in denuding him of all his property and so rendering him insolvent thereafter.

A mortgagee whose security is admittedly insufficient may bring an action to set aside such conveyance and that without first realizing his security.

Judgment of the Supreme Court of British Columbia (7 B.C. Reports 189) reversed, Gwynne J. dissenting. Appeal allowed with costs.

*Aylesworth, Q.C., and Wilson, Q.C., for appellant. Dockrill, for respondent.*