

Ct. Ap.]

NOTES OF CANADIAN CASES.

[Ct. Ap.]

## McDONALD V. BULLIVANT.

*Mortgage, etc.—Merger.*

The defendant had created a mortgage on certain lands, which he subsequently conveyed to one P., the conveyance being silent as to whether it was a sale of the equity of redemption merely or an absolute sale, the payment of the mortgage being part of the consideration. The defendant subsequently became insolvent and included this in his schedule as an indirect liability, and the mortgagee obtained from P. an assignment of his interest to his wife in order, as he stated, to prevent a merger.

In a proceeding by the mortgagee against the defendant an award was made in favour of the plaintiff, which the defendant moved to set aside. The motion was refused by Galt, J., and on appeal to this Court that judgment was affirmed with costs.

A. Hoskin, Q.C., for the appeal.

W. Cassels, Q.C., contra.

## McEWAN V. McLEOD.

*Practice—Interest on judgment.*

Where an appeal is made against a judgment in any personal action which is affirmed on appeal, interest is allowed for such time as execution has been stayed by the appeal; but where the plaintiff refrained from entering up his judgment until after the decision in appeal, this court refused to order interest to be allowed on the amount of the verdict; leaving the plaintiff to apply to the Court below for relief by entering the judgment *nunc pro tunc*.

Aylesworth, for the application.

Holman, contra.

## HUGHES V. BOYLE.

*Appeal bond—Costs on discontinuing appeal.*

Where appeal proceedings are abandoned by giving notice of discontinuance, the respondent, if he desires, may proceed, upon the bond given as security to effectually prosecute the appeal, to recover his costs from the sureties of the appellant. He is not obliged to apply to the Court below and sign judgment for them there against the appellant.

Donovan, for the appellant.

C. Millar, contra.

From Co. Ct., York.]

## PALIN V. REID.

*Innkeeper—Gratuitous bailee.*

The plaintiff had been for some time a guest of the defendant—an innkeeper—and on leaving the inn after paying his bill, left a box containing some papers and books alleged to be of value to the plaintiff, in the room of the inn used for storing baggage, etc., the plaintiff intending to take it away the day following, but owing to the illness of the plaintiff he did not call for it for several weeks afterwards, when it was discovered that the box was lost. The plaintiff was not to pay anything by way of storage, etc., and it was shown that defendant had not been guilty of any negligence in the matter. In an action brought to recover the value of the box and contents at the trial before Burnham, J. C. C. O.—sitting for the judge of the County of York—a verdict was entered for the defendant, which, in the following term, was set aside by the learned Judge and a verdict entered for the plaintiff for \$50.

An appeal from this judgment was allowed with costs, and the rule to set aside the verdict discharged with costs.

Osler, Q.C., and O'Sullivan, for the appellant.

Delamere, for the respondent.

From Co. Ct., York.]

## GODDARD V. COULSON.

*Mechanics' Lien.*

The defendants contracted with one C. for the execution of the stonework upon certain buildings. C. never completed the work, but during the progress thereof was paid in good faith sums exceeding the value of the work actually done by him on the building before he abandoned the contract.

Held (reversing the judgment of the learned Judge of the Court below), that a sub-contractor with C. could not enforce payment of his claim out of the ten per cent. reserved under the Act 41 Vict. ch. 17, sec. 11, as security for the payment of the claims of sub-contractors.

Ritchie, for the appeal.

Snelling, contra.