

Province of Ontario.

COURT OF APPEAL.

From Armour, J.]

[March 16.]

GOOD v. TORONTO, HAMILTON AND BUFFALO R. W. Co.

Contract—Conditions—Reference to engineer.

The rule that a contractor is bound by a condition in his contract making the employer's engineer the interpreter of the contract and the arbiter of all disputes arising under it does not extend to a case where the named engineer, while in fact the engineer of the employer, is described in the contract as, and is supposed by the contractor to be, the engineer of a third person. Judgment of ARMOUR, C.J., affirmed.

Osler, Q.C., and D'Arcy Tate for the appellants. Aylesworth, Q.C., and S. F. Washington for respondents.

From Drainage Referee.]

[March 16.]

YOUNG v. TUCKER.

Water and watercourses—Drainage—Cultivation of land.

While the owner of land has an undoubted right to drain it in the ordinary course of husbandry he must take care that any water collected by his drains is carried to a sufficient outlet, and if the water is drained into a pond which is not large enough to hold the additional volume of water thus brought into it, he is liable in damages to a person whose land is flooded by water overflowing from that pond. Judgment of Drainage Referee reversed.

Aylesworth, Q.C., and F. W. Kittermaster for appellant. A. Weir for respondent.

From Boyd, C.]

[March 16.]

MORROW v. LANCASHIRE INSURANCE CO.

Insurance—Fire insurance—Mortgage—Cancellation of policy—Double insurance—Proofs of loss.

A policy of insurance covering the buildings on the mortgaged property and their contents assigned by the mortgagor to the mortgagees as collateral security cannot be cancelled by the insurance company at the request of the mortgagees without notice to the mortgagor.

Insurance effected by the mortgagees after the attempted cancellation does not affect the mortgagor's right of recovery on the policy effected by him.

Where the insurers repudiate liability on a policy they cannot object that proofs of loss have not been furnished. Judgment of BOYD, C., 29 O.R., 377, affirmed.

W. M. Douglas and C. S. MacInnes for appellants. Geo. Wilkie for respondent.