

possessor to the occupant or possessor next succeeding him, or inevitably fail in his action.

McMichael, Q.C., and W. H. Jones, for the plaintiff.

Britton, Q.C., for the defendant.

Practice.

Court of Appeal.] [May 11, 1887.

CITY OF TORONTO *v.* TORONTO STREET
RAILWAY CO.

Appeal—Injunction—Staying operation of—
R. S. O. c. 38, s. 27.

Held, that the operation of an injunction awarded by a judgment of the court below was stayed pending an appeal to this court, after the perfecting of the security on appeal, by virtue of R. S. O. c. 38, s. 27.

McCarthy, Q.C., for the appellants.

Robinson, Q.C., for the respondents.

Chy. Divisional Court.] [Dec. 2, 1887.

CLARRY *v.* BRITISH AMERICA ASSURANCE CO.

Reference—Ontario Judicature Act, s. 47—
Actions on fire insurance policies—Accounts.

Where in actions upon fire insurance policies the questions in issue between the parties were not confined to matters of mere account, but the defendants disputed their liability, and issues of fraud, misrepresentation and concealment of facts were raised upon the pleadings.

Held, that an order referring all the issues in the actions to a referee for inquiry and report was improperly made, and that the plaintiff was entitled to have a trial in the ordinary way.

Laidlaw, Q.C., and Kappeler, for the plaintiff.

*McCarthy, Q.C., and Wallace *obit.* for the defendants.*

Chy. Divisional Court.] [Dec. 7, 1887.

WATT *v.* CLARK.

Settlement of action—Powers of solicitor—Instructions from client.

After the trial of an action had been postponed at the assizes and the defendant had

left the assize town, his solicitor and counsel effected a settlement with the plaintiff, which was given effect to by the entry of a verdict and judgment by consent. The solicitor admitted that he was not instructed, but relied on his client adopting the settlement, which was, in the solicitor's opinion, a favourable one. The client said that he had instructed his solicitor not to settle in the way he did.

Held, that the defendant was entitled to have the verdict and judgment set aside, and a new trial on payment of costs.

H. J. Scott, Q.C., for the defendant.

Aylesworth, for the plaintiff.

C. P. Divisional Court.] [Dec. 23, 1887.

DUNDAS *v.* DARVILL.

Interpleader—Liability for costs of execution creditor not contesting claim.

A banking corporation, one of several execution creditors made parties to an interpleader issue, did not desire to contest the right of the claimant to its share of the proceeds of the goods seized and sold, but was willing that such share should be paid over to the claimant in the event of the latter not succeeding in the issue.

Held, that the Corporation was not, under these circumstances, liable to contribute to the costs of the issue; but nevertheless was properly made a party to the issue, and would be entitled, if the claimant failed, to its proportion of the proceeds arising from the sale of the goods.

Aylesworth, for the Molsons' Bank.

Lash, Q.C., for the other execution creditors.

Mr. Dalton, Q.C.] [Dec. 30, 1887.

PARKER *v.* HOWE.

Attachment of debts—Dividends on insolvent estate.

A judgment creditor seeking to garnish funds due to his judgment debtor by S., served an attaching order upon the assignee of S. under an assignment for the benefit of creditors. At the time of the service the assignee had in his hands the greater part of the moneys belonging to the estate of S., but had not declared a