Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

SMITH *v.* MILLIONS.

Survey—Plan part of description in deed.

The decision of the Court below (reported 15 O.R. 453) was reversed with costs, this Court being of opinion that having regard to the plan itself the lots must be laid out in rectangular, and not in rhomboidal, shape.

McVeity, for the appellant.

Lash, Q.C., for the respondent.

McLEAN *v.* BROWN.

Sale of goods—Material condition in contract—Refusal to accept—Action for deposit and damages.

This Court being equally divided in opinion, an appeal from the judgment of the Divisional Court of the Chancery Division (reported 15 O.R. 313) was dismissed with costs.

Per HAGARTY, C.J.O., and OSLER, J.A.—The stipulation as to consignment was a condition the breach of which justified the refusal to accept the lambs.

Per BURTON and MACLENNAN, JJ.A.—This stipulation was merely collateral to the contract.

Osler, Q.C., for the appellant.

Aylesworth, for the respondent.

Re McDONAGH AND JEPHSON.

Creditors' Relief Act—Executions against firm and against individual partners—Sale of firm property—Mode of distribution of proceeds.

The Creditors' Relief Act is merely intended to abolish priority among execution creditors of the same class, and to alter the legal effect of the executions themselves or to effect a distribution of separate and partnership assets in the manner in which such assets are administered in bankruptcy.

There were in the sheriff's executions (1) against R. alone; (2) against R., J. J. and G. J. on a joint note given by them for the price of a horse, J. J. being merely a surety for R. and G. J., who bought the horse as partners and held it as partnership property; (3) against G. J. and R. on a joint note given by them for the price of a threshing machine purchased for the purpose of being used in another partnership business carried on by them quite distinct from that partnership business to which the horse belonged; and (4) against G. J. and R. on a joint note in which R. was surety only for G. J. The horse was seized and sold.

Held, reversing the decision of the County Court of the County of Huron, that the proceeds of this sale were distributable rateably among the execution creditors (2) and (3).

Moss, Q.C., and *Chisholm*, for the appellants.

S. H. Blake, Q.C., for the respondents.

BARTRAM *v.* HILL.

Sale of goods—Contract induced by false pretences—Purchaser for value without notice.

The plaintiff exchanged with one H. a horse belonging to the plaintiff for a mare supposed to belong to H., and gave H. $10 "to boot." As a matter of fact the mare had been stolen by H., and her owner subsequently reclaimed her. H. sold the horse to the defendant, who had no knowledge of the fraud. H. had not been prosecuted under R.S.C., cap. 174, s. 230.

Held, affirming the judgment of the County Court of the County of Brant, that the plaintiff having intended to part absolutely with his property in the horse to H., and the defendant having purchased the horse in good faith, the fact that the transfer to H. was made by way of barter and exchange, and not by way of sale, did not affect the matter, and the plaintiff could not recover.

Bentley v. Vilmont, 12 App. Cas. 471, considered.

MacKenzie, Q.C., for the appellant.

Aylesworth, for the respondent.

GOLDIE *v.* JOHNS.

Tax sale—Replevin—Sale of safe held under lien agreement—R.S.O., c. 184, s. 364—R.S.O., c. 195, ss. 122, 123, 124.

In December, 1886, the defendants sold to one H., who was a tenant to the defendant