of Queen's Bench, that the plaintiff was entitled to recover against B.

*Bethune*, Q.C., and *Ewart* for appellants. *Miller* for the respondent.

*Appeal dismissed.*

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From Proudfoot, V.C.] [Jan. 26.

RE ROSS.

*Production, Affidavit of.*

On appeal from an order of the Master at Barrie demanding the production in his office of the books of creditors, who had produced promissory notes as vouchers for their claim, Proudfoot V. C. held that an undertaking by the creditors to permit inspection by the executors or their agent of their books and accounts at their place of business in Toronto, and to permit the executors to make extracts, was satisfactory, and set aside the direction with costs. *Held*, on appeal from this decision, that the executors were also entiled to an affidavit identifying the books and documents as being all in their possession relating to the claim.

*Mulock* for the appellant.

*McDonald* for the respondent.

*Appeal allowed.*

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From C.P.] [Jan. 26.

FITZGERALD v. GRAND TRUNK RAILWAY.

*Agreement—Additional parol term—Railways—Conditions.*

The plaintiffs declared upon a contract by the defendants to carry, in covered cars, a quantity of petroleum. The oil was shipped by the plaintiffs from London upon a request note signed by them, and a corresponding receipt granted by the defendants, by which they undertook to carry it to Halifax subject to the terms and conditions endorsed upon it, by which they stipulated, and the plaintiffs agreed that they should not be responsible unless the goods were signed for as received by a duly authorized agent; that they would not be liable for leakage or delays and that oil would under no circumstances be carried except at the owner's risk. The receipt said nothing about covered cars, but a verbal contract between the plaintiffs' and defendants' agent was proved, whereby the defendants agreed to carry the oil in covered cars. The oil was, however, carried in open cars, and delayed at different places on the journey, in consequence of which a large quantity was lost.

*Held*, affirming the judgment of the Common Pleas, that even if the verbal contract was admissible the defendants were not liable thereon, as it was one which the evidence shewed the agent had no authority to make; but that the condition providing that the oil should be carried at the owner's risk did not absolve them from negligence in carrying it, which was clearly shewn, although they had power to make such a stipulation, and that the plaintiffs were therefore entitled to recover for the damage sustained, and the declaration was amended accordingly.

*Per* MOSS, C. J. A., that the verbal evidence was admissible, as the nature of the transaction shewed that the parties did not intend the documents to be the record of the contract.

*Per* BURTON, J. A., that it was inadmissible, as there was no evidence to show that the parties did not contemplate that the consignment note and the receipt should be the final and complete contract.

*McMichael*, Q. C., and *Bethune*, Q. C., for the appellants.

*Glass*, Q. C., and *Fitzgerald* for the respondents.

*Appeal dismissed.*

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From C.P.] [Jan. 26.

RYAN v. RYAN.

*Statute of Limitations—Possession as caretaker v. agent—Subsequent entry of owner—Tenancy at will.*

*Held*, reversing the decision of the Common Pleas 29 C. P. 449, PATTERSON, J. A., dissenting, that the evidence shewed that the plaintiff occupied the lands in question as tenant at will, not as caretaker and agent of his father, and that there had been no determination of the tenancy.

*Bowlby* for the appellant.

*McCarthy*, Q.C., for respondent.

*Appeal allowed.*