

[Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

should be a commission of 35 per cent. on all business obtained by himself, or the agents under his control, he to pay the agents there-out, and a salary of \$75 a month, which was to include travelling expenses, and in renewal 30 per cent. The plaintiffs afterwards added Hamilton and Galt to his agencies. Subsequently the minor agencies were taken away from B, and his business was confined to Toronto, and he relinquished his commission on all outside agencies; and it was intimated to him that at the close of the year his salary would have to be rearranged.

Held, that the taking away of the sub-agencies was such a change in B's position as could not be said to be without enquiry evidently unsubstantial and not prejudicial to the sureties, and would of itself discharge them; but as to adding Hamilton and Galt it could be said on the evidence to have such effect.

Held, also, that the effect of the renunciation clause was to place the principal and sureties in the position of joint contractors; that the agreement confining B's business to Toronto amounted to a new contract, and that the sureties would only be liable for default up to the date of such new contract, but not thereafter.

Robinson, Q.C., for the plaintiff.

Moss, Q.C., and *Drayton*, for the defendants.

CHANCERY DIVISION.

Proudtfoot, J.]

COATES ET AL. V. COATES.

Contract—Specific performance—Statute of Frauds—Part performance—Requisites to take out of the statute.

A brought an action against B for the rents and profits of certain lands which had belonged to the father of A and B, who died intestate, and which B had taken, and had possession of for several years. On the action being entered for trial a settlement was arrived at, by which the action was to be stayed upon the undertaking of B to obtain certain releases, etc. B's counsel appeared in court when the action was called for trial, and stated that it was settled, and an entry was made in the minute that the case was

"settled out of court." Subsequently B required certain releases to be obtained by A, which A agreed to procure. B obtained such releases, and complied with all his conditions, and A refused to complete the agreement.

In an action by A to compel B to perform the agreement, in which B set up the Statute of Frauds,

Held, that the staying of the action was a sufficient part-performance to withdraw the contract from the operation of the statute as being (1) an act referring to a contract consistent with the alleged one. (2) It would lead to fraud to allow the defendant to escape from performance because the contract was not in writing. (3) The contract was such a one as would have been enforced had it been in writing; and (4) The contract was fully proved.

Aylesworth, for the plaintiff.

J. K. Kerr, Q.C., and *Cassels*, for the defendants.

Divisional Court.]

[January 8.]

THE TORONTO BREWING AND MALTING CO. V. HENRY.

Surety—Representation on which bond executed—Jury findings.

The defendant agreed to become security with McG. for McB. to the plaintiffs. Plaintiffs' solicitor sent two bonds to their agent for execution, one by defendant and the other by McG. The agent attended defendant to get his bond executed, and in answer to a remark of defendant's (made before he signed the bond) that McG. had promised to sign a bond too, told him that a bond had been sent up to be signed by McG. Defendant then signed the bond, but McG. subsequently refused to sign his.

The jury found that a statement was made, leading defendant to suppose that the bond executed was conditional upon the execution of the proposed bond from McG., and that its execution was obtained by a false, although unintentionally so, representation.

Held (affirming O'CONNOR, J.), that the plaintiffs could not recover.

MacLennan, Q.C., and *Kingsford*, for plaintiffs.
R. Meredith, for defendant.