

Chancery.]

NOTES OF CASES.

[Chancery.]

a conveyance of the trust estate, applies to the commission or allowance to a trustee for his care, pains and trouble under the Act of Ontario, 37 Vict. cap. 9.

Whereon a reference to a Master to take an account of a trustee's dealings with an estate, that officer omitted to ascertain the amount of the trustee's charges, costs, &c., a reference back to ascertain it was directed at the hearing on further directions; and the fact of the Master having reported that the trustee had omitted to keep any regular set of books shewing a debtor and creditor account of his dealings with the estate, but did not state that for that reason he had been unable to ascertain the amount, was not considered a sufficient reason for his having omitted to find the amount of such claim.

Fitzgerald, Q.C., for plaintiffs.

W. Cassels, for defendants.

RE CREDIT VALLEY RAILWAY COMPANY AND SPRAGGE.

PROUDFOOT, V.C.]

[Jan. 10.]

Railway company—Valuing lands taken for railway—Arbitration—Costs.

Where arbitrators are appointed to award compensation for lands taken for the purposes of a railroad, and assess the damages sustained by the proprietors by reason of the severance of the lands, the arbitrators may properly take into consideration the increased value to the estate by reason of the construction of the railroad, although benefited only in the same way as other farms in the neighbourhood through which the railroad does not pass; as also the increase in value by reason of the probable location of a station at a town in the vicinity of the lands, and which the company had bound themselves to place there in consideration of a bonus paid by such town.

Although the statute (C.S. U.C. cap. 66) directs that when the sum awarded for lands taken for a railroad is less than that tendered, the costs shall be borne by the owners; the same rule does not apply as to the costs of an appeal to this Court, they being then in the discretion of the Court, who, under the circumstances, dismissed this appeal without costs.

R. M. Wells for the company.

O'Brien contra.

BILLINGTON V. PROVINCIAL INS. CO.

PROUDFOOT, V.C.]

[Jan. 31.]

Fire insurance—Agent of company—Agent of assured—Prior insurance—Notice to agent of company.

On the 6th February, 1875, the plaintiff applied to the agent of the defendants at Dundas,

to effect an insurance for two months from that date, for which he paid the premium demanded and obtained an interim receipt, but, before a policy was issued to the plaintiff, the property was destroyed by fire; and it was shewn that it was not usual to issue policies for short risks—but after the fire occurred, a policy was issued on which were indorsed, amongst other conditions, one, that notice of all previous insurances upon the property should be given to the company and indorsed on the policy, or otherwise acknowledged by them in writing; and another, that if the agent of the company made the application for the insured, he should be considered the agent of the insured, and not of the company; but no intimation of such a condition appeared on the receipt given to the plaintiff. When the insurance was applied for, the plaintiff informed the agent of the existence of a prior insurance on the same property in another company, (the same person was, in fact, agent for both companies), and expressed great anxiety to have the same properly acknowledged by the company; but it appeared that the agent had omitted to communicate the fact of such prior insurance to his principals. It was proved by the manager of the defendants, that it was the duty of the agent to receive applications for insurance, and part thereof would be the existence of other insurances. In an action brought to recover the amount of the policy, the company raised several defences of false representations by, and fraudulent contract on the part of the insured, all of which were either abandoned or disproved at the trial; the defence being finally rested on the want of notice of prior insurance and the question of agency.

Held, under the circumstances stated, that the plaintiff was entitled to recover the amount of loss sustained by him together with his costs of suit, the amount of which the company were ordered to pay forthwith.

B. Osler, Q.C., and *Moss* for plaintiff.

Huson Murray for defendants.

McKILLOP V. SMITH.

BLAKE, V.C.]

[Feb. 14.]

Demurrer—Pleading.

Where a bill by a municipality seeking to restrain the defendants from obstructing a highway in one paragraph alleged that the defendants "have fenced or allowed the same to be fenced," and in another paragraph that they were "in the occupation and possession of the said side line * * and have prevented and still prevent the inhabitants * * and the public at