

## MAGISTRATES, MUNICIPAL, INSOLVENCY & SCHOOL LAW.

### NOTES OF NEW DECISIONS AND LEADING CASES.

**GOVERNMENT AID TO RAILWAYS.**—*Held*, that the defendants, who had contracted merely for the *grading and fencing* of a portion of their road before the date specified in sec. 3 of 34 Vic., ch. 2, were not entitled to aid under that section, as having contracted for the *construction* of such portion of their road.—*McRae v. Toronto and Nipissing Railway Co.*, 22 U. C. C. P. 1.

## SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

### NOTES OF NEW DECISIONS AND LEADING CASES.

**INTERIM ALIMONY.**—On an application for interim alimony, the validity of the alleged marriage cannot be tried. If a marriage *de facto* is proved, it is sufficient.

But to obtain an order for interim alimony, the plaintiff must shew she is in want of means of support.

When the parties had been living separate for four years, and the wife did not allege she was in want of means of support, and the husband swore she was in better circumstances than he was, an order was refused.—*Bradley v. Bradley*, 3 Ch R. 329.

**SALE OF WHEAT—CONVERSION INTO FLOUR—SHIPPING RECEIPT**—M. & Co., at Guelph, bought a car-load of wheat on commission for C. They paid for it themselves, and shipped it by the defendants' railway, taking the railway receipt in their own name as consignees. The car was addressed to the care of C. at Watertown, M. & Co. being aware that it was intended to be ground there for C., and the receipt was endorsed by them to the Canadian Bank of Commerce. Through this bank they drew upon C. at 15 days' sight for the price, with their commission and bank charges, and discounted the draft with the receipt attached as collateral security. At Watertown the wheat was delivered by defendants, upon C's order, to his brother, who had a mill there. It was mixed by him with other wheat and ground, and fifty-five barrels of flour, the equivalent for it, was delivered by him to the defendants for C. C. became insolvent before the draft matured, and M. & Co. took it up and got the railway receipt re-indorsed to them. C's assignee having sued the defendants in trover and detinue for the flour, they, in

privity with M. & Co. denied the plaintiff's right to it, and set up the title of M. & Co. The case having been tried without a jury:

*Held*, that M. & Co., on the re-indorsement by the bank to them, were in as of their former title, not as assignees of the bank, with the rights given to the latter by the statute, and that their rights must be considered as if the bank had never intervened.

2. That the defendants were entitled to set up the title of M. & Co. as a defence.

3. *Wilson*, J. dissenting, that as between M. & Co., and C., the insolvent, the property in the wheat did not pass to C. until paid for, it being the reasonable presumption from all the circumstances that this was the intention of the parties.

4. That the conversion of the wheat into flour made no difference, for, looking at the usual course of business in such matters, this flour, though not made from the identical wheat, should be regarded as the produce of it.

The defendants, therefore, were held entitled to succeed.—*Mason, Assignee of F. D. Cummer, v. The Great Western Railway Company*, 31 U. C. Q. B. 73.

**DISTRESS FOR RENT—SEIZURE OF SHEEP—LIABILITY OF LANDLORD—TRESPASS.**—It is illegal to distrain sheep when there are other goods upon the premises sufficient to satisfy the claim; and trespass was therefore held to lie against a landlord for the act of his bailiff in so distraining, it appearing that he had spoken of making the sale, and had received the proceeds thereof, and no evidence being offered of his non-complicity therein.—*Hope v. White et al*, 22 U. C. C. P. 5.

**LIABILITY OF CO-TRUSTEES—AGENTS—INTEREST**—A trustee is bound to exercise a prudent supervision over the acts of an agent, or a co-trustee appointed or acting as agent or manager, for his co-trustee; and where he neglects this duty he makes himself liable for losses occurring through the acts of such agent or manager.

But a trustee in this position was not held liable for moneys received by his agent or co-trustee acting as manager, which were not entered on the books (to which the trustee charged had access) and which he could not have discovered by any vigilance he might have used.

A trustee is liable for the acts of an agent in whose appointment he has concurred, and whose defalcations would have been discovered by an ordinary inspection of the books kept by him.

Where compensation was given to trustees by the trust deed, not in a lump sum, and they had failed in some points of their duty, the Master