

The defendants were a road company incorporated under the General Road Companies Act, R.S.O., c. 159, and by s. 99 thereof were required to keep their road in repair.

Section 145 enacts that no action shall be brought for any matter or thing done in pursuance of the Act, unless such action be brought within six months next after the fact committed.

*Held*, that the construction of the culvert and the erection of the posts was "done in pursuance of the Act," although improperly done, so that there was not sufficient protection afforded thereby to guard the travelling public from falling into the ditch; and that under the above section the time for bringing the action was limited to within six months from the date of the accident, and that period having elapsed the plaintiff's action must be dismissed.

*McCarthy*, Q.C., for the defendants.

*Aylesworth*, Q.C., and *Biggar* for the plaintiff.

Div'l Court.]

[Feb. 21.

GEMILL v. NELLIGAN.

*Husband and wife—Mortgage—Bar of dower—Right to dower in surplus.*

*Held*, that where mortgaged lands have been sold by the mortgagee under the mortgage, the wife of the mortgagor, who has joined in the mortgage to bar her dower, is entitled to dower out of the surplus remaining after payment of the mortgage debt and costs, to the full extent of what would have been the value of her dower in the whole of the land if the same had not been mortgaged or sold; and sufficient of such surplus must be paid into court, there to remain to insure her dower in case she should become entitled thereto.

*Pratt v. Bunnell*, 21 O.R. 1, not followed so far as the reasoning and dicta therein are opposed to the above decision.

*W. H. Blake* for the defendant, wife of the mortgagor.

*L. McCarthy* for the defendant, the mortgagor.

Div'l Court.]

[Feb. 21.

BRIDGEWATER CHEESE FACTORY CO. v. MURPHY.

*Banks and banking—Promissory note—Improper signature by president for company—Discount—Repayment.*

Decision of *STREET*, J., noted 30 C.L.J. 736, reversed.

*Per MEREDITH*, J.: The plaintiffs were placed in a position where they must affirm or disaffirm the transaction; if they affirmed they were right in charging the defendants as they did, but were bound to credit them with the note when it eventually came home to them; if they disaffirmed the transaction, then they proved that they were not and never were entitled to the sum in question; and so in either case the action failed and should be dismissed.

*Moss*, Q.C., *Masson*, and *D. E. K. Stewart* for the plaintiffs.

*Oster*, Q.C., and *Guss Porter* for the defendants.