

plaintiffs, into the bank on account of this advance, leaving a balance of \$330 still due. The defendants were notified by plaintiffs that they were the owners of the grain, but in disregard of such notice, sold the grain, contending that the warehouse receipt was a continuing security for F. & McL.'s general indebtedness to the bank, which then exceeded \$2,250. The plaintiff having brought trover,

Held, that the evidence shewed that the warehouse receipt was not such continuing security, but was only to be security for the amount actually advanced upon it, and that trover would lie for selling more grain than was sufficient to satisfy the amount so due the bank; that in any event an action for money had and received would lie, and that an amendment, if it was necessary, adding such a count would now be allowed.

McMichael, Q. C., for the plaintiffs.

Robinson, Q. C., and *W. Mulock* for the defendants.

MAY V. STANDARD INSURANCE COMPANY.
Insurance—Seizure of goods—Avoidance of policy—Reasonable conditions.

A condition of a policy of insurance provided that if the property insured should be levied upon or taken in possession or custody under any legal process, or the title be disputed in any proceeding at law or in equity, the policy should cease to be binding on the company. The insured property, which consisted of goods and chattels, was mortgaged by K., the assured, to the plaintiff. An execution against goods issued against K., who was in actual possession of the goods, under which the sheriff made a seizure, but on obtaining a bond from K. for their re-delivery he withdrew from possession.

Held, that that part of the condition, which provided for the goods being levied on or taken under execution, &c., was just and reasonable, and that what took place here constituted a valid seizure within the meaning of the condition.

Semble, that the latter part of the condition, which referred to title being disputed, &c., was unjust and unreasonable.

McMichael, Q. C., for the plaintiff.

Bethune, Q. C., for the defendants.

DUNBAR V. LARKIN.

Contract—Damages.

A contract was entered into between the plaintiff and defendant, whereby it was agreed that if defendant should obtain from the Department of Public Works the contract for doing the work on section one of the Welland Canal enlargement, the defendant was to have certain dredging connected therewith at prices agreed upon. The plaintiff bound himself to perform the work, and upon the faith thereof, the defendant put in a tender for the contract. The defendant obtained the contract, though not at the tender prices, but on his agreeing to take it at the prices named in the lowest tender. The defendant then refused to give plaintiff the contract for the dredging, but gave it to another at prices less than the plaintiff was to have, and he entered upon the performance of the work, and had performed a large portion thereof. In an action by plaintiff against defendant for breach of the contract,

Held, that the defendant was liable.

Held, also, that the plaintiff was not bound to wait until the completion of the entire contract before he could sue for damages; and that on the evidence, set out in the case, the damages were ascertainable, which in this case the majority of the Court found to be \$5,000.

Per WILSON, C. J., dissenting as to the amount of damages, that they should be \$25,000.

Ferguson, Q. C., for the plaintiff.

Robinson, Q. C., and *J. A. Miller* (St. Catharines), for the defendant.

ANGLIN V. NICKLE ET AL.

Railway—Land taken for railway purposes—Action on bond to pay amount awarded—What covered by bond—Freehold and leasehold lands—Description—Costs—Execution by two of three arbitrators—Sufficiency—Tender of conveyance—Necessity for.

This was an action on a bond, given by the defendants to the plaintiff which, after reciting the fact of a notice having been served on the plaintiff by the Kingston and Pembroke Railway Company, requiring