

Chan. and C. P.]

NOTES OF CASES.

[C. L. Cham.

peace before whom the affidavit of *bona fides* to a chattel mortgage was sworn was omitted through inadvertence, it was held invalid as against a subsequent execution creditor.

*C. H. Ritchie* for the appellant.

*J. K. Kerr*, Q.C., for the respondent.

*Appeal dismissed.*

### CHANCERY.

Chancellor.]

[April 23.

TORONTO DAIRY CO. v. GOWAN.

*Covenant in restraint of trade—Injunction—Liquidated damages.*

The defendant agreed to serve the plaintiffs in their business of milkmen, and in case of any breach by him of the agreement entered into between the parties, and signed by them, that he would forfeit the sum of fifty dollars, to be recovered by the plaintiffs as stipulated damages, and not as a penalty.

*Held*, That this did not enable the defendant, on payment of the \$50, to do the prohibited acts; and in a bill seeking to enforce the agreement the plaintiffs prayed for payment of the amount of the liquidated damages, and for an injunction to restrain the defendant from acting in breach of his agreements.

On the motion for injunction coming on,

*Held*, that the plaintiffs were at liberty to waive their claim for damages and elect to have relief by injunction.

### COMMON PLEAS.

Osler J.]

[May 27.

BRILLINGER v. ISOLATED RISK & C. INSURANCE COMPANY.

*Insurance—Statutory conditions—Departure—Pleading.*

The second count of a declaration, after alleging that it was on a fire insurance policy for \$1,000, dated 28th May, 1877, which, by its terms, was said to be subject to certain pretended conditions endorsed on said policy and set out at length in the first count,

averred that the policy was a policy entered into and in force in Ontario with respect to property situate therein, and that the said conditions were the only conditions, and were not, nor was any of them in conformity with the Fire Insurance Policy Act, nor variations of such conditions as required by said Act, whereby the conditions so endorsed upon the policy are inoperative and void, and the policy is free from all conditions as against the plaintiff.

The fifth and sixth pleas alleged that the policy was subject to the conditions in the words and figures following, that is to say, setting out conditions with respect to proofs of loss, &c., and averred respectively non-performance by omitting to give notice of loss forthwith, and to deliver a statutory declaration that the loss was just, &c.

To these pleas the plaintiff replied, setting up grounds of excuse for the non-performance of the conditions set out therein.

*Held per OSLER, J.*, replication bad as being a departure from the declaration; but that the pleas were also bad, for that the conditions set out therein, being the statutory conditions, and not being endorsed on or in any way appearing in the policy, and not being conditions of the character referred to in *Geraldi v. Provincial Ins. Co.*, 29 C. P., they could not be set up as a defence to the action.

*J. A. Patterson* for the plaintiff.

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

### COMMON LAW CHAMBERS.

McLAREN v. McCUAIG.

Mr. Dalton.]

[May 3.

*Similiter—Jury notice—Notice of trial—Chancery sittings.*

After issue joined, the plaintiff served notice of trial for the Chancery sittings. Defendant afterwards served a similiter and jury notice. *Held*, that the similiter and jury notice are good, and that the notice of trial must be set aside.

*Alan Cassels*, for plaintiff.

*Aylesworth*, for defendant.