

Com. Pleas Div.]

NOTES OF CANADIAN CASES.

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open and a more expensive and burdensome course is adopted it must be at the peril of costs.

The practice of bringing an action for an amount due on a mortgage within the proper competence of the Division Court in the High Court by making a claim for possession of the land is one that must be carefully guarded; and except in cases clearly indicating the necessity for proceeding in the High Court no costs will be given to the plaintiff.

In this case where the amount claimed under a mortgage was within the proper competence of the Division Court but suit brought in the High Court, and there were no circumstances shewing the necessity for bringing it, no costs were allowed to the plaintiff.

Simpson, for the plaintiff.

Burdett, for the defendant.

Rose, J.]

DONELLY V. DONELLY.

Husband and wife—Separate business—Husband interfering in—Injunction.

The plaintiff, a married woman, owned an hotel business and chattels in the hotel. The defendant, the husband, interfered with the plaintiff in the prosecution of the business, taking the receipts, interfering with the servants and maltreating the plaintiff personally, inflicting painful injuries on her person.

An injunction was granted restraining the defendant from interfering with the plaintiff in the carrying on of the business, or with the servants or agents, or with the business itself; and also from removing any of the chattel property belonging to the plaintiff and used by her in the hotel.

Semle, that under the circumstances if it had been asked for the injunction would also have been for excluding the defendant from the hotel.

W. R. Riddell, for the plaintiff.

No one appeared for the defendant.

Rose, J.]

CHATTERTON V. CROTHERS.

Building contract—Liquidated damages for delay.

Action for balance due under a building contract. Defence: that by the contract the

plaintiff was to build the house and have the same completely finished and ready for the defendant's occupation by a named date "under a penalty of \$5 per day" to be paid by the plaintiff to the defendant for each and every day the work on said house remained unfinished after the said date, alleging that the work remained unfinished after the said date for some sixty days, making an amount of \$300 which defendant was entitled to deduct from the contract price.

Held, in demurrer defence good: that the \$5, though called a penalty, were in fact liquidated damages.

Lash, Q.C., for the demurrer.

McIntyre, Q.C., contra.

Rose, J.]

WILSON V. WOOD.

Slander—Justification—Pleading evidence in mitigation of damages

In an action of slander the statement of claim set out that the plaintiff was a solicitor, and as such was retained and instructed by one S. to let certain farming lands and collect the rents and profits thereof for and on behalf of said S., and the defendant falsely and maliciously spoke and published of the plaintiff, that "he," S., "could not get anything from plaintiff who has been collecting the rent for S.; he had never made any return to S., he has used the money himself; he has robbed him out of the whole affair, and the only thing he could do would be to send him to the penitentiary," meaning that the plaintiff was guilty of fraudulent and felonious conduct in his said business.

In the statement of defence the defendant denied all the allegations contained in the statement of claim, and in the second paragraph said that if the plaintiff established that the defendant spoke and published of the plaintiff the words charged in any of them, the defendant in mitigation of damages said that S., defendant's brother-in-law, about fifteen years ago left this Province and went to British Columbia, leaving plaintiff in full charge and control of all his real and personal estate herein; but never had been able to get any satisfactory statement of his affairs from him; that in July last defendant's sister,