

Common Pleas Division.

MACMAHON, J.] [Dec. 10, 1889.
SCOTTISH AMERICAN INVESTMENT CO.
v. TENNANT.

Mortgage—Right to consolidate.

The plaintiffs, who were the mortgagees under three mortgages from the same mortgagors on different lands, were held entitled only to consolidate in respect of the mortgages in default when action brought to enforce them, and as the amount due on the mortgages had been paid, and there was then no default, the right to consolidate was refused.

Lockhart Gordon for the plaintiffs.

Urquhart for the defendant.

MACMAHON, J.] [Dec. 10, 1889.
STACK v. SHAND.

Dower—Payment of yearly sum by report of commissioners—Payable only from filing of report—Dower Procedure Act—O. J. Act.

After action commenced and judgment obtained under the O. J. Act for the recovery of dower in certain lands, proceedings were taken under the Dower Procedure Act for the assignment of dower, but the commissioners appointed under the Act, in lieu of assigning dower, reported in favor of a yearly sum being paid. The report was filed in the office of the local registrar of the court, and in the local registry office, on the 22nd February, 1889.

Held, that there could only be a recovery of the sums assessed since such last named date.

Held, also, that had proceedings been continued under the O. J. Act, instead of substituting those under the Dower Procedure Act, the plaintiff's remedy would have been very different.

Washington for the plaintiff.

Hoyles, Q.C., for the defendant.

Div'l Ct.] [March 7.
BADGEROW v. GRAND TRUNK RAILWAY CO.

Railways—Accident—Negligence—Evidence of defective brake—Latent defect.

Action by the plaintiff to recover damages for the death of her husband, by reason of, as was alleged, a defective brake on a car on defendants' railway, on which deceased was employed as a brakeman.

Held, there could be no recovery, for the evidence failed to show how the accident happened, the contention that it was the defective brake being mere conjecture; and even if it were the cause of the accident, it would be no ground of liability, for, under the defendants' rules, it was the deceased's duty to examine and see that the brakes were in proper working order, and report any defect to the conductor, and if he made the examination he apparently discovered no defect, as he made no report, a latent defect being no evidence of negligence, and if he omitted to make such examination, etc., then the accident would be attributable to his own negligence.

McCullough for the plaintiff.

Nesbitt for the defendants.

Div'l Ct.]

REGINA v. CANTILLON.

Liquor License Act—Adjudication—Conviction—Imprisonment without prior distress—Cost of conveying to jail.

The adjudication on a second offence under the Liquor Act, without providing for distress, directed immediate imprisonment on default of the payment of the fine and costs, and the conviction drawn up under it was in similar terms. After the issue of a writ of *certiorari*, but before its return, an amended conviction was returned providing for distress being first made.

Held, that the adjudication and conviction made under it were bad for not providing for distress, and that the amended conviction could not be supported, because it did not follow the adjudication.

Semble, that had the amended conviction been in other respects good, it would not have been bad under the Liquor License Act for including the costs of conveying to jail.

DuVernet for the defendant.

Langton for the Crown.

Div'l Ct.]

REGINA v. ROWLIN.

Conviction—Imposition of costs of commitment and conveying to jail—Offence against Public Health Act R.S.O., c. 205.

A conviction for carrying on a noxious and offensive trade contrary to R.S.O., c. 205, the Public Health Act, imposed in default of suffi-