

injuries received whilst in his service, subject to the condition, amongst others, that "if any proceedings be taken to enforce any claim, the company shall have the absolute conduct and control of defending the same throughout in the name and on behalf of the employer, retaining or employing their own solicitors and counsel therefor"—

Held, that the plaintiff was not entitled, in the face of such a stipulation, to claim from the defendants the amount of a judgment obtained against him by an employee in an action defended by the plaintiff through his own solicitor and counsel, leaving the defendants to show as a defence, or by way of counter-claim, that they could have done better by defending it themselves; nor was an offer by the plaintiff, at a time when the action was at issue and on the peremptory list for trial the following day, to hand over the defence to the defendants' solicitors a sufficient compliance with the condition.

W. Cassels, Q.C., for the plaintiff.

W. Nesbitt and J. H. Denton for the defence.

ARMOUR, C.J.]

IN RE BAIL V. BELL.

[March 11.]

Prohibition—Division Court—Mortgage—Contract or obligation to indemnify against—Action for interest only—Dividing cause of action—R.S.O. c. 51, s. 77.

Where the plaintiff conveyed land to the defendant subject to a mortgage, and after maturity of the mortgage paid the mortgagee two gales of interest accruing since maturity, which he sought to recover from the defendant by action in a Division Court,

Held, that the contract or obligation of the defendant to indemnify the plaintiff was an entire one; the breach was either the not paying the mortgage when it fell due, or not indemnifying the plaintiff against it, and it was an entire breach; the contract or obligation and the breach constituted one cause of action; the plaintiff had, therefore, divided his cause of action, contrary to s. 77 of the Division Courts Act, R.S.O., c. 51, and prohibition should be awarded.

N. F. Davidson for the plaintiff.

S. W. McKeown for the defendant.

Chancery Division.

Div'l Court.]

GREEN V. TORONTO RAILWAY CO.

[Feb. 21.]

Negligence—Street railway company.—Right of way—Duty to sound the gong.

A car of the defendants' railway was coming along the down-grade in the Queen street subway. The plaintiff was engaged as a servant of the city of Toronto in sweeping the roadbed. The motorman did not sound the gong and ran into the plaintiff.

Held, that the judgment in favour of the plaintiff at the trial should be affirmed.