the property to his brother. Two of the creditors claimed that this deed was fraudulent, and made a demand, under sec. 68 of the Insolvent Act of 1875, on the assignee to take proceedings to have the deed set aside which the assignee, on instructions from the other creditors, refused to do, and thereupon these two creditors obtained an order from the County Judge authorizing them to take proceedings, on their own behalf in the name of the assignee; such proceedings under the said section to be for their own benefit. Proceedings were thereupon taken by these creditors and the deed set aside and the land recovered back and was sold, and upon an order obtained from the County Judge a conveyance was made by the assignee to the purchaser, under whom the plaintiff claims. The defendant contended that this deed was void under sec. 75 because it was not authorized by the creditors at their first meeting or any subsequent meeting specially called for the purpose or by the inspector.

Held, ROSE, J. dissenting, that the deed was valid; that it depended entirely on the provisions of sec. 69, and was in no way affected by sec. 75; and, therefore, the sanction of the creditors was not essential to its validity; but at any rate the defendant, a mere stranger to the insolvency proceedings, could not avail himself of the objection.

The defendant set up a possessory title, but the Court *held* that the evidence failed to establish it; and also that damages awarded the plaintiff for mesne profits were not excessive.

McMichael, Q.C., for the plaintiff.

McCarthy, Q.C. and *Nesbitt*, for the defendant.

BROWN V. HOWLAND.

Promissory note—Made by secretary of Company —Individual liability—Completed instrument —Election to look to company for payment.

The Toronto Wheel and Waggon Company being indebted to plaintiff he got a note therefor signed by the defendant, who was secretary of the company, with, as defendant alleged, "per" before his signature, the intention being to fill in the company's name above defendant's, which had not been done. After the note became due, the plaintiff proved on the note against the company who had gone into insolvency and obtained a dividend. The plaintiff subsequently sued defendant.

Held, that defendant was not liable.

Per CAMERON, C.J., that defendant must be treated as maker of the note, and would have been liable thereon, and, if material, it could not be said that the word "per" was before his name for what was alleged to be such might equally well be a flourish of the first initial letter of his name, but for his election to look to the company for payment by proving against them and accepting a dividend.

Per OSLER, J.A. The instrument never became perfected as a note, it being intended that the name of the company should have been filled in.

Held, also that the requirement of sec. 79 of the Canada Joint Stock Act, 1877, requiring the name of the company to be mentioned in legible letters with the word limited, did not apply here as this did not purport to be signed by or on behalf of the company.

McLean, for the plaintiff.

Arnoldi, for the defendant.

CLENDENNING V. TURNER.

Wharf—Tolls—Damages—Navigable waters.

The defendant built a wharf on the waters of Toronto Bay adjacent to the Island near Hanlan's Point under permission from the Commissioner of Crown Lands for the Province of Ontario. It was claimed, however, that the water lots in front of the Island, or at all events, the free access to and from the shore over the waters of the Bay was vested in the City of Toronto by grant from the Crown prior to Confederation. The defendant claimed to exact tolls from plaintiff for using the wharf, and also for damage done to the wharf by the negligence and want of care in management of his boat.

Held, that it was not necessary to decide as to the ownership of the soil under the water in question; that the relationship and dealings of the parties as disclosed by the evidence showed that no tolls were to be charged; that the wharf was constructed on the navigable waters of the Bay, and assuming that the Commissioner of Crown Lands had power to grant the license it did not give power to