

Judgment of FALCONBRIDGE, J., reversed, OSLER, J.A., dissenting.

*Biggar, Q.C., and H. M. Morvat* for the appellants.

*Ritchie, Q.C., and J. Pearson* for the respondents.

DALRYMPLE v. SCOTT.

*Contract—Letters—Breach—Condition—Damages—Sale of goods.*

To a written offer to sell some flour on certain terms the following telegram was sent:—"Letter received, offer accepted, writing." No letter was written.

*Held*, affirming the judgment of the Queen's Bench Division, that there was a completed contract.

Where before the time for the completion of a contract for sale of goods one party notifies the other that he does not intend to complete that notification may be treated as a breach, and at once acted on; but if, as he may, the other party waits till the time for completion and then brings his action, he must show that at this time he had himself fulfilled all conditions precedent on his part.

Judgment of the Queen's Bench Division on this branch of the case reversed, MACLENNAN, J.A., dissenting.

*Watson, Q.C.*, for the appellants.

*S. G. McKay* for the respondents.

[June 28.]

CUMMING v. LANDED BANKING AND  
LOAN CO.

*Trusts and trustees—Executors—Breach of trust.*

One executor may, without the concurrence of his co-executor, validly sell or pledge assets of the estate to a purchaser or mortgagee in good faith, and the purchaser or mortgagee is not put upon inquiry or affected with notice of breach of trust because the executor is described in the transfer or mortgage as "trustee." Every executor is a trustee, but he does not cease to be an executor and become merely a trustee until the testator's wishes are completely carried out.

Judgment of the Queen's Bench Division, 20 O.R. 382, affirming that of BOYD, C., 19 O.R. 426, reversed, HAGARTY, C.J.O., dissenting.

*F. Mackelcan, Q.C., and W. Cassels, Q.C.*, for the appellants.

*Marsh, Q.C.*, for the respondents.

HIGH COURT OF JUSTICE.

Chancery Division.

Div'l Court.]

[June 28.]

GUNN v. CALDWELL.

*Promissory notes—Given as collateral security—Discounted, retired, and sued on by holder—Effect of.*

On a sale of land an extension of time for some payments was granted, when some promissory notes made by subsequent purchasers were given to the plaintiff as collateral security. The plaintiff discounted the notes, but was obliged to retire them at maturity, and afterwards recovered judgment on them without being able to realize anything.

*Held* (reversing the judgment of GALT, C.J.), that this treatment of the notes did not make them the plaintiff's property, and that in an action to recover the balance of the purchase money he was not bound to give credit for their amount.

*Robert Hodges* for the plaintiff.

*A. Elliott* for the defendant.

HETT v. JANZEN.

*Lessor and lessee—Covenant to repair—Defective grating—Who liable, owner or tenant.*

In an action against the owner of a building for damages caused by a defective grating in front of it, in which it was shown that the premises were leased to tenants who had covenanted to repair, and after the expiring of the lease had remained on as tenants,

*Held* (affirming the judgment of ARMOUR, C.J.), that the owner of the premises was not liable.

*King, Q.C.*, for the plaintiff.

*Laidlaw, Q.C., and Miller, Q.C.*, for the defendant.

STREET, J.]

[July 6.]

PATTERSON v. TANNER ET AL.

*Mortgage—Power of sale—Exercise of—Obligation to carry out sale—Effect of not doing so.*

A mortgagee having exercised the power of sale in a mortgage and sold the land for sufficient to pay the mortgage and costs cannot