

noise of some boys at play on the other side of the fence he clambered up it to see what was going on; the fence being in a rickety condition, fell upon the plaintiff and injured him. One line in the judgment of A. L. Smith, L.J., covers the whole ground, "a rotten fence close to a highway is an obvious nuisance." This, coupled with the extreme youth of the plaintiff, was held by the Court of Appeal (Smith, Rigby and Williams, L.JJ.), to be sufficient to entitle him to recover upon the authority of *Lynch v. Nurdin*, 1 Q.B. 29.

COSTS—PAYMENT INTO COURT—ACCEPTANCE IN SATISFACTION—DEFENDANT'S SUBSEQUENT COSTS—ORD. XXII. R. 7—(ONT. RULE 423)

Lomer v. Waters (1898) 2 Q.B. 326, is a decision on a simple point of practice. The defendant after defence, and after the action had been entered for trial, paid into Court a sum in satisfaction, which the plaintiff accepted, and requested the defendant to consent to the case being struck out of the trial list, but which he refused, except upon an undertaking to pay the defendants' costs, incurred subsequent to the payment in, which the plaintiff declined to give. The cause came on for trial, when Darling, J., made an order for the defendant to pay the plaintiff's costs up to the date of the payment into Court, and for the plaintiff to pay the defendant his costs subsequently incurred: but the Court of Appeal (Smith, Chitty and Williams, L.JJ.) held that there was no jurisdiction to order the plaintiff to pay the defendant's costs.

GAMING—BET ON HORSE RACE—ILLEGAL CONSIDERATION 9 ANNE, C. 14—GAMING ACT, 1835 (5 & 6, W. 4. C. 41), S. 1

In *Woolf v. Hamilton* (1898) 2 Q.B. 337, the plaintiff sued to recover the amount of a cheque given in payment of a bet on a horse race. The plaintiff was indorsee of the cheque, with notice of the consideration for which it had been given. 16 Car. 2, c. 7 and 9 Anne, c. 14, made all such securities null and void, but the Gaming Act, 1835, repealed these Acts so far as it made the securities void, and enacted that they should be deemed to have been given for an illegal consideration, and the result of that Act was to prevent the plaintiff