UNION BANK OF LOWER CANADA v. BULMER.

Promissory note—Accommodation—Made by partner without authority—Renewal—Knowledge of holder.

In an action on a promissory note the defence was that the note of which it was a renewal was given for the accommodation of the payee by the defendant's partner who had no authority to make it, and that the plaintiffs when they took the renewal knew of its defective character.

Held, that as it did not appear that such knowledge attached when the original note came into plaintiff's possession they were entitled to recover.

Irvine, Q.C., for the appellants.

A. W. Atwater, for the respondent.

CASSELS v. BURNS.

Ships and shipping—Charter party—Damage to ship—Nearest port—Deviation.

A ship sailed from Liverpool in September under charter to load lumber at Bathurst, N.B. Having encountered heavy weather the captain found it necessary to make repairs and proceeded to St. John for that purpose. By the time the repairs were completed it was too late to go to Bathurst and carry out the charter. In an action against the owners for breach of charter the plaintiff obtained a verdict, the jury finding that the repairs could have been made at Sidney, C.B., and if made there could have been complete in time to load at Bathurst.

Held, affirming the judgment of the court below (20 N.B. Rep. 13,) that going to St. John to repair the ship was such an unnecessary deviation from the voyage as to render the owners liable for breach of charter party.

Skinner, Q.C., for the appellants.

W. Pugsley, for the respondents.

ELLS v. BLACK.

Trespass—Disturbing enjoyment of right of way—User—Easement.

E. and B. owned adjoining lots, each deriving his title from S. E. brought an action of trespass against B. for disturbing his enjoyment of a right of way between said lots and for damages. The fee in this right of way was in S., but E. founded his claim to a user of the way by himself and his predecessors in title for upwards of forty years. The evidence on the trial showed that it had been used in common by the successive owners of the two lots.

Held, affirming the judgment of the court below (19 N.S. Rep. 222), RITCHIE, C.J., and GWYNNE, J., and dissenting, that as E. had no grant or conveyance of the right of way, and had not proved an exclusive user, he could not maintain his action.

Sedgewick, for the appellant.

Drysdale, for the respondent.

MOONEY v. MCINTOSH.

Trespass—Title to land—Boundaries—Easement—Agreement at trial—Estoppel.

In an action for damages by trespass by McI. on M.'s land and by closing ancient lights defendant claimed title in himself and pleaded that a conventional line between his lot and the plaintiff's had been agreed to by a predecessor of the plaintiff in title. On the trial the parties agreed to strike out of the pleadings all reference to lights and drains and to try the question of boundary only.

Held, affirming the judgment of the court below, RITCHIE, C.J., and GWYNNE, J., dissenting, that independently of the conventional boundary claimed by the defendant the weight of evidence was in favour of establishing a title to the land in question in the defendant and the plaintiff could not recover, and that by the agreement at the trial the plaintiff could not claim to recover by virtue of a user of the land for over twenty years.

Semble, that if it was open to him such user was not proved.

Sedgewick, Q.C., for the appellants.

Henry, Q.C., for the respondents.