

Q. B.]

NOTES OF CASES.

C. P.

themselves of the statutable conditions of the Ontario Act, and by condition 15 of that Act a settlement by arbitration is made a condition precedent.

Held, 1. That the power to incorporate Companies for other than Provincial purposes is a power impliedly given to the Dominion Legislature, but

2. That it is not necessary to the exercise of that power to do more than give the Company corporate existence, perpetual succession, and power to contract, and not to settle the terms of the contract.

3. That under B. N. A. Act, sec. 92, ss. 11, 13, and 16, the Ontario legislature had power to pass 39 Vict. ch. 24, O., and fix the form and terms of the contracts upon which insurance companies, wherever incorporated, might do business in Ontario.

4. That the conditions on the policy relied on in the 8th plea failed to comply with the Ontario Act, and could not prevail; that the condition 15 in the Ontario Act only referred to fixing the amount and not the liability of the Company, and so did not correspond with the condition on the policy, and was not a condition precedent to the right to sue, but collateral.

5. If condition 15 is read in connection with the policy which states payment is to be made after "the loss shall have been ascertained in accordance with the terms of the policy," then it would be a variation of the statutory conditions of 39 Vict., and so not before the Court, but if so read and before the Court, it would be unreasonable.

S. Richards, Q. C., for plaintiff.

Ferguson, Q. C., for defendants.

CLEMENTSON V. GRAND TRUNK R. W. CO.

Stoppage in transitu—Insufficient Notice.

W. P., in Hamilton, bought from plaintiffs in England 15 packages of goods, which were shipped at Liverpool, 8th November, 1876, by T. M. & Co., plaintiff's shipping agents, in whose name as consignors the bills of lading were made, W. P. being the consignee. On the 23rd November the way bill of the major part of the goods arrived at Hamilton, and on the same day M. P. & Co., creditors of W. P., obtained an endorsement to them of the bill of lading, and notified defendants on the 4th December. The plaintiffs' branch house at St. John, N. B., were telegraphed by W. P. (who had become insolvent), to detain the goods.

The branch at St. John then immediately telegraphed to the defendants: "Do not deliver earthenware from our English house to W. P.; hold to our order. Clementson & Co." W. P. had a large number of other packages with defendants.

Held, that the notice to stop was insufficient, as it did not specify or identify the goods in question, and the plaintiffs' names did not appear in any bill of lading held by the defendants.

MacKelcan, Q. C., for plaintiff.

McMichael, Q. C., for defendants.

COMMON PLEAS.

IN BANCO. MICHAELMAS TERM.

NOVEMBER 19, 1877.

McDOUGALL V. WADDELL, SHERIFF.

Priority of Executions—Division Courts Execution Growing Crops.

Held, in an action for a false return to a writ of *fi. fa.*, goods, that under section 266 of the C. L. P. Act, where a writ has issued against the goods of a party from a Superior Court, and a warrant of execution has issued against the goods of the same party from the Division Court, the right to the goods seized is to be determined by the priority of the time of the delivery of the writ or warrant to the sheriff or bailiff respectively, and not by the priority of seizure.

Held, also, that the right acquired by such prior delivery, which, in their case, was to the Division Court bailiff, was not under the circumstances of the case, defeated by his omission to endorse on the warrant, as required by the same section, the time of such delivery.

Held, also, that growing crops are seizable under a Division Court execution.

M. C. Cameron, Q. C., for the plaintiff.

Armour, Q. C., for the defendant.

OLIVER ET AL V. GREAT WESTERN RAILWAY COMPANY.

Principal and Agent—Railway Company—Shipping Receipt.

One C. was the defendants' freight agent at Chatham, and it was so mentioned in the printed notices given by the Company, naming certain places and agents where and to whom