

From Armour, C.J.]

[Jan. 7.

OATMAN v. MICHIGAN CENTRAL RAILWAY COMPANY.

*Fire—Railways—Negligence—Onus of proof.*

In an action against a railway company, carrying on business under legislative sanction, to recover damages resulting from a fire alleged to have been caused by a spark from an engine, the plaintiff must, in addition to giving evidence from which it may reasonably be inferred that the fire was caused as alleged, also give some evidence of negligence on the part of the defendants, *e.g.*, in the construction or management, or want of repair of the engine, and the onus is not upon the defendant to prove that they have adopted and used with due care reasonable contrivances to avoid the danger of fire.

Judgment of ARMOUR, C.J., reversed.

*I. F. Hellmuth, and D. W. Saunders, for appellants. Charles Millar, for respondent.*

From Divisional Court.]

[Jan. 7.

GLOVER v. SOUTHERN LOAN AND SAVINGS COMPANY.

*Mortgage—Sale—Execution—Encumbrancers—Collateral security.*

Execution creditors, though they probably cannot sell under their writs the interest of their execution debtor in land subject to more than one mortgage made by him, are, nevertheless, encumbrancers upon that interest, and upon the proceeds thereof in the event of a sale of the land by a mortgagee, and entitled to payment thereout according to priority.

A mortgagee who sells the land and pays off an encumbrancer who holds, to his knowledge, collateral security, must take over that collateral security for the benefit of subsequent encumbrancers, including execution creditors, and is liable to them for the value thereof if he fails to do so.

Judgment of a Divisional Court, 31 O.R. 552; 36 C.L.J. 129, affirmed, MACLENNAN, J.A., dissenting.

*Armour, Q.C., and Farley, Q.C., for appellants. Aylesworth, Q.C., and John Crawford, for respondents.*

From Meredith, J.]

LITTLEJOHN v. SOPER.

[Jan. 7.

*Landlord and tenant—Company—Assignments and preferences—Forfeiture—Waiver—Estoppel—Covenant—Sub-lease.*

The lessors to a company in a lease containing the usual provision as to forfeiture in the event of an assignment for the benefit of creditors by the lessees, held all the shares in the company except three. The company made an assignment under the Act, one lessor moving, and the other seconding, the resolution authorizing this to be done, and both executing the assignment as assenting creditors:—

*Held, per ARMOUR, C. J. O., and MACLENNAN, J. A., that the lessors were estopped, under these circumstances, from taking advantage of the*