

C. of A.]

NOTES OF CASES.

[C. of A.]

Spragge, C.]

[Sept. 7.]

GEORGIAN BAY v. FISHER.

*Action against owner of lost vessel—Limitation of liability—Right to restrain proceedings at law—17 & 18 Vict. chap. 104 (Imp.).*

The defendant, as administratrix of her husband, who lost his life by the foundering of a steamer belonging to the plaintiffs, called the *Waubuno*, on which he was a passenger, sued the plaintiffs to recover damages under R. S. O. c. 128.

The plaintiffs filed a bill under 17 & 18 Vict. chap. 104 (Imp.), to restrain the action. They also prayed that it might be determined by the Court whether they were liable for loss of life or merchandise, and if so for what amount, and who were entitled thereto.

*Held*, reversing the decree of SPRAGGE, C., that the *Waubuno* was not a British ship, and therefore not within the limitation clauses of the above Act, but that even if it were, the plaintiffs were not entitled to an injunction, as they did not admit that they were answerable in damages to the extent mentioned in the Act, and bring into Court or offer to secure the amount for which they would be liable.

*Bethune, Q.C., and C. Moss for appellant.*

*McCarthy, Q.C., and Creelman for respondents.*

*Appeal allowed.*

Spragge, C.]

[Sept. 7.]

CAMPBELL v. McDougall.

*Mortgage—Non-disclosure of unregistered agreement to postpone mortgage.*

The plaintiff being about to advance money to W. M. on property on which the defendant, J. M., had a prior mortgage, J. M. executed an agreement that the proposed mortgage to the plaintiff should have priority over his. This agreement was not registered, and ten years afterwards J. M. assigned his mortgage to the Quebec Bank to secure acceptances on which he was liable, and the assignment being registered superseded the agreement, the existence of which J. M. had not mentioned to the bank.

The plaintiff filed a bill against the execu-

tors of W. M., the Quebec Bank and J. M. for payment of the amount due, and in default that mortgaged premises should be sold and that J. M. might be ordered to make good any losses sustained by reason of J. M. having assigned his mortgage to the bank.

The evidence showed that the present value of the land was not worth enough to cover J. M.'s indebtedness to the bank.

*Held*, that the Court could not, under the circumstances, order a sale of the property in opposition to the wishes of the bank, at the instance of J. M., a subsequent incumbrancer, who did not ask to redeem; but that the plaintiff was entitled to a decree against J. M. for payment of the mortgage money, leaving J. M., when he had paid off the amount, to pursue whatever remedy might be available as between him and the bank for whatever surplus, the property may yield, the plaintiff in the meantime retaining his position as a subsequent incumbrancer.

*Held*, also, BLAKE, V.C., dissenting, that as the litigation was occasioned more by plaintiff's neglect to register the agreement than by J. M.'s omission to mention it, neither party were entitled to costs, either in this Court or the Court below.

C. C. Wellington.]

[Sept. 10.]

MITCHELL v. COFFEE.

*Execution—Seizure—Exemption from—Reaping machine.*

The defendant, as landlord, levied on a reaping machine on premises leased by him to the plaintiff, who there carried on the business of an hotel-keeper. It appeared that the machine belonged to one W., and had been left some six months before at the hotel by one R., W.'s agent for the sale of reaping machines, when he was stopping at the plaintiff's hotel. It was not shown that R. had ever been at the hotel since except perhaps on one occasion. The plaintiff was paid nothing for keeping the machine, nor did he assume any responsibility for its safety. At the trial it was sought to prove that it was essential to the plaintiff's business to keep as well as receive these machines in this