COTTINGHAM v. COTTINGHAM.

Sale and purchase of lands—Sale by auction—Excess in quantity.

The judgment reported 5 O. R. 704 was reversed on appeal, the Court being of opinion, PATTERSON, J.A., dissenting, that the sum of $3,100 was bid for the premises, stated to be 100 acres more or less.

Per BURTON, J.A.—The price per acre was only a mode of arriving at the sum bid, assuming the lot to contain 100 acres.

TOWERS v. THE DOMINION IRON CO.

Sold by sample—Right to reject goods.

The defendants bought by sample from W., who acted as a broker between them and the plaintiff, a quantity of cotton droppings or waste, to be delivered f.o.b. at St. Catharines, and by the directions of the defendants the same were forwarded to their branch house at Cincinnati, where it was alleged they were found to be not equal to the sample. In the meantime, however, the defendants had accepted a bill drawn on them by the plaintiff for the price of the waste.

Held, affirming the judgment of SENKLER, J.C.C., that the proper place to have inspected the goods was at St. Catharines, and that if even the goods were not up to sample, it formed no ground of defence to the action on the bill.

Semble, *per* HAGARTY, C.J.O., that the only remedy in the case in favour of the defendants was by cross action.

WALMSLEY v. SMALLWOOD.

Appeal for costs—Disclaimer—Practice.

J., one of the defendants, had bid for and became the purchaser of a lot of land sold under the provisions of the R. S. O. ch. 216, by certain parties claiming to be trustees of the Coloured Wesleyan Church, whose proceedings in respect of such attempted sale were impeached in the action to which J. was made a party defendant, although he avowed his willingness to withdraw from the purchase, and by his answer disclaimed "all interest in the result of this suit, and no effort has been made by him to have said sale carried out, as he was aware that the same would have to be first confirmed by the members of the said church." At the trial judgment was given setting aside the sale, and ordering the defendants generally to pay costs.

Held, reversing the judgment of the Court below, that under the circumstances a formal disclaimer was not required, and J. was ordered to be paid his costs of the appeal, although the action in the Court below was dismissed as against him without costs.

COSGRAVE v. STARRS.

Guarantee—Effect of death of one of the partners to whom a guarantee is given—Notice to determine guaranty.

The judgment in this action, reported in 5 O. R. 189, was varied on appeal by limiting the liability of the defendant under his guaranty to C. & Co. to what was due by Q., on the 5th of April, 1882, when notice to discontinue supplying him with goods was given to C. & Co. by the guarantee.

BUTTERWORTH v. SHANNON.

Principal and agent—Purchase of lands by agent—Ratification.

The plaintiff paid $1,000 to the defendant for the purpose of investing the same in Manitoba lands for the plaintiff in case the defendant thought it advisable, if not, the money to be returned. The defendant did not pursue such authority, but purchased ten lots in Portage la Prairie. Two of these lots defendant alleged he purchased for the plaintiff, but there was no evidence of this other than the defendant's own statement, the conveyance of the ten lots having been taken in the defendant's name. The plaintiff subsequently agreed to take these two lots upon the representation of the defendant that they equalled the other lots in size, etc., which proved to be incorrect

Held, affirming the judgment of the Court below, that the adoption of the purchase by the plaintiff having been made by reason of the defendant's misrepresentations as to size and value of the lots, the plaintiff was not bound thereby, and was entitled to recover back the amount so entrusted to the defendant.