

C. of A.]

NOTES OF CASES.

[C. of A.]

From C. P.]

[June 25th.]

BOICE V. O'LOANE.

*Action on Judgment—Limitation—38 Vict., c. 16.
Sec. 11. O.*

Held, reversing the judgment of Gwynne J., that Sec. 11 of 38 V., c. 16 O. does not apply to judgments; and an action may still be brought thereon within 20 years under C. S. U. C., c. 78, sec. 7.

C. Robinson, Q.C., for the appellant.

Bethune, Q.C., for the respondent.

Appeal allowed.

From C. P.]

[June 25th.]

NORTHWOOD V. RENNIE.

Sale of Goods—Warranty—Statute of Frauds.

The plaintiff sued the defendant for a breach of warranty of a hay press, which he had agreed to purchase from the plaintiff if it should be capable of pressing into bales 10 tons of hay per day, which the defendant warranted it would do. The machine was delivered to the plaintiff, but upon trial failed to do the stated amount of work, and was returned. The defendant denied the warranty and gave evidence to show that the sale was only on condition. At the close of the plaintiff's case an onsuit was moved for on the ground that no money having passed, the plaintiff could not maintain an action for damages, and that the machine having been returned and no money paid, no action would lie; also that the Statute of Frauds was a bar. Leave was reserved to move on the whole case. After discussion as to the position of the case on the evidence, it was arranged that the question to be submitted to the jury was, was there a guarantee by the defendant that the machine should be fit to do the above amount of work. The jury found a verdict for the plaintiff. *Held*, affirming the judgment of the Common Pleas, that the verdict was amply supported by the evidence; and that the arrangement entered into at the trial precluded the defendant from taking the objection that no action would lie on the warranty because there was no sale. *Held*, also, that the plaintiff's right of action was not affected by the Statute of Frauds.

A. Galt, for the appellant.

C. Robinson, Q.C., for the respondent.

Appeal dismissed.

From Chy.]

[June 25th.]

STANDARD BANK V. BOULTON.

Married Woman—Separate Estate.

A married woman, married in 1852, who was by virtue of her marriage settlement entitled to the legal estate for life, in certain lands after the death of her husband, during his life endorsed a promissory note made by him to secure his liability to the Bank. A bill was filed against her after her husband's death to realize the amount. *Held*, reversing the judgment of Blake, V.C., that she was not liable, as this was not her separate estate within the meaning of 35 Vict., c. 16, s. 1, at the time the note was given.

C. Robinson, Q.C., and Leith, Q.C., for the appellant.

Boyd, Q.C., for the respondent.

Appeal allowed.

From C. P.]

[June 25th.]

CAMERON ET UX., V. WAIT.

Highways—Right to original allowance—Municipal Act.

Trespass for the removal of a fence placed by the plaintiffs across what was an original allowance for road between lots 8 and 9. The plaintiff who owned the south half of lot 9, claimed to be entitled to this allowance by reason of the Justices of the Quarter Sessions having, in 1837, laid out a road across the South half of lot 9, in lieu, as was claimed, of the original road allowance. In proof thereof, the report of the then surveyor was produced, dated 15th July, 1837, addressed to Justices, reciting the petition of twelve freeholders for the new road, with his certificate of his having examined and surveyed it, and given notice according to law; the road to be fifty feet wide. He also certified as to his having examined the original allowance and found it impracticable by reason of bad hills and swamps, while the new road was good. On the back of the report was endorsed the minute of the Quarter Sessions thereupon, namely: "Read and approved and confirmed this 18th July, 1837," &c., which, with the user of the road as a highway, was the only evidence of their action in the matter. At the time the road was laid out the Quarter Sessions had no power to sell an original road allowance or convey it to the person whose land was taken in compensation; and they could only alter a road on the condition that the new or substituted road should