

Full Court.]

[Dec. 31.]

REGINA v. PETRIE.

Criminal law—Trial of prisoner by judge without jury—Right of judge to view locality of offence—Absence of prisoner—Question of law arising on trial.

The prisoner was tried without a jury by a county court judge, exercising jurisdiction under the Speedy Trials Act, upon an indictment for feloniously displacing a railway switch. After hearing the evidence and the addresses of counsel, the judge reserved his decision. Before giving it, having occasion to pass the place, he examined the switch in question, neither the prisoner or any one on his behalf being present. The prisoner was found guilty.

Held, that there was no authority for the judge taking a "view" of the place and his so doing was unwarranted; and even if he had been warranted in taking the view, the manner of his taking it, without the presence of the prisoner or of anyone on his behalf, was unwarranted.

Held, also, that the question whether the judge had the right to take a view was a question of law arising on the trial, and was a proper question to reserve under R.S.C., c. 174, s. 259.

Dymond for the Crown.

Middleton for the prisoner.

Div'l Ct.]

[Dec. 31.]

CANN v. KNOTT.

Execution—Free grants and homesteads—Exemption from execution—Interest of original locatee as mortgagee after alienation.

The judgment of *BOYD, C.*, 19 O.R., 422, affirmed on appeal.

Foy, Q.C., for the defendant, Elizabeth Knott.
D. Urquhart for the plaintiff.

Div'l Ct.]

[Dec. 31.]

WESTERN ASSURANCE CO. v. ONTARIO COAL CO.

Insurance, marine—General average contribution—Attempt to rescue vessel and cargo—Common danger—Average bond—Adjustment—Expenditure—Liability of owners of cargo.

The judgment of *BOYD, C.*, 19 O.R., 462, affirmed on appeal.

Oster, Q.C., and *A. W. Aytoun-Finlay*, for the plaintiffs.

Delamere, Q.C., and *D. Urquhart*, for the defendants.

Chancery Division.

Div'l Ct.]

[Dec. 11.]

PEUCHEN v. IMPERIAL BANK OF CANADA.

Sale of goods—Implied warranty of title—Failure of consideration—Bill of lading—Transfer of interest under—Absolute sale by pledgees—Findings of jury—Inconsistency—Duty of trial judge.

The plaintiffs sued the bank to recover the price paid the bank for certain goods which, owing to a customs seizure and forfeiture, the plaintiffs never received.

The bank was never in actual possession of the goods but a bill of lading was indorsed to them as security for advances, and this bill of lading was indorsed and delivered by the bank directly to the plaintiffs.

The jury found that it was the bank which sold the goods to the plaintiffs; that they professed to sell with a good title; that they had not a good title; and that the plaintiffs could not by any diligence have obtained the goods.

Held, that upon these findings and the evidence the transaction must be regarded as a sale by the bank as pledgees with the concurrence of the pledgor, and not as a mere transfer of the interest of the bank under the bill of lading; and that the plaintiffs were entitled to recover the price as upon an implied warranty of title and a failure of consideration.

Morley v. Attenborough, 3 Ex., 500, commented on and distinguished.

Held, also, per *ROBERTSON, J.*, that the trial judge was within his right and duty in sending the jury back to reconsider their findings after pointing out their inconsistency.

Oster, Q.C., and *A. McLean Macdonell*, for the plaintiffs.

Bain, Q.C., for the defendants.

Practice.

STREET, J.]

[Dec. 30.]

DORAN v. TORONTO SUSPENDER CO.

Sheriff's interpleader—Who should be plaintiff in issue—Material on sheriff's application—Barring execution creditor.

Where goods seized by a sheriff under execution are at the time in the possession of the execu-