DECISIONS IN COMMERCIAL LAW.

MOLSONS BANK v. COOPER.—A mercantile firm obtained a line of credit from a bank, "to be secured by collections deposited," and made in favor of the bank a number of notes to cover the amount of the advance. They deposited with the bank customers' notes to an amount nearly equal to the advance, and from time to time withdrew notes that fell due and deposited others. They suspended payment, and the bank obtained several judgments against them on such of their notes as were due and issued executions. The sheriff realized under these and other executions, and prepared to make a distribution under the Creditors' Relief Act. The defendants then made an application to compel the bank to credit on the judgments moneys collected by it upon the customers' notes and an issue was directed, in which it was held that the bank was entitled by virtue of the agreement entered into to hold these moneys in suspense as security against any ultimate loss, and was therefore not bound to give credit. Then the bank brought an action on other notes that had matured, having at the time a larger sum in the suspense account than the amount for which action was brought. At this time the sheriff expected to pay a further dividend under the Creditors' Relief Act. Held by the Supreme Court that the bank was entitled to judgment for the full amount of the claim, and was not bound to appropriate the moneys collected to that particular portion of the debt. Held also, that at all events the judgment in the issue was conclusive upon this question. In the result the judgment of the Queen's Bench Division, 26 O. R. 575, was reversed, MacLennan, J.A., dissenting.

NORTH BRITISH AND MERCANTILE INSURANCE COMPANY v. TOURVILLE.—In an action on an insurance policy by an assignee the company pleaded that the insured, in his application for insurance on his lumber, had materially exaggerated the quantity and value of the lumber mentioned in such application, and thereby obtained excessive insurance thereon, and that after the loss he had falsely and fraudulently exaggerated the amount thereof, whereby the policy was forfeited under a condition therein that it should be forfeited if the claim was in any respect fraudulent. On the trial of the action there was no direct evidence of fraud, but a strong presumption was raised that the insured could not have had nor lost the quantity of lumber claimed for. The trial judge held that fraud had not been established and gave judgment for the plaintiffs, which was affirmed by the Court of Queen's Bench. Held by the Supreme Court, reversing the judgment of the Court of Queen's Bench, that direct proof of the fraud was not essential; it was sufficient that it had been clearly established by presumption or inference, or by circumstantial evidence Held, further, that fraud by the insured having been established, his assignee could not recover. If a sufficiently clear case is made out the court will allow an appeal on mere question of fact against the concurrent findings of two courts below. The rule to the contrary may also be departed from where the action is not tried by a jury; the trial judge did not hear the witnesses, but gave judgment on written dispositions; the judges of the intermediate Court of Appeal were not unanimous, and the majority expressed great doubt in adopting the findings of the trial judge; it did not appear that the non-production by the plaintiff of material documents was taken into consideration; and the intermediate court gave weight to a piece of undoubtedly illegal evidence.