

Held, that the speed at which the steamer was run, under the circumstances prevailing at the time, was excessive and that defendants were liable in damages for the injuries resulting from the collision.

W. B. A. Ritchie, K.C., and Robertson, for plaintiff. J. J. Ritchie, K.C., for defendant.

Full Court.] D'HART v. McDERMAID. [Dec. 3, 1910.
Vendor and purchaser—Amount payable by instalments—Interest—Construction of word "due."

An agreement in writing for the sale by defendant to plaintiff of a house and lot of land for the agreed price of \$800, payable in instalments, after providing for payment by plaintiff of the instalments at stipulated times and taxes, insurance and repairs, etc., provided: "The rate of interest chargeable by all parties concerned on the balance of this purchase price which may from time to time be due shall be, etc." It appeared that at the time of the transaction defendant was in insolvent circumstances and that the property was incumbered and that the price fixed, to be paid by plaintiff, was sufficient to discharge all incumbrances and to leave a small balance over to be paid as commission to the person named as defendant's agent to receive the money. Defendant admitted that he was handing the property over to the plaintiff for the incumbrances against it and that he was to receive nothing beyond that.

Held, reversing the judgment of the trial judge (RUSSELL, J. dissenting), that the interest clause of the agreement must be read as applying only to the instalments, i.e., to instalments from time to time due and unpaid, and not to the principal sum named as the purchase price of the property.

F. McDonald, in support of appeal. W. B. A. Ritchie, K.C., contra.

Full Court.] OLAND v. MACKINTOSH. [Dec. 3, 1910.

Partition—Sale by order of court—Sheriff's deed—Effect of—Easement—Right to continue drain—Heir buying will not acquire against third party in absence of reservation.

Held, where land was sold by the sheriff by order of the court made in a partition suit and two of three lots of land were