

"I hereby agree to the above. (Sd.) R.T., owner."

Held, (reversing FALCONBRIDGE, J.) not a demise of the tug, but a contract of hiring.

F. R. Latchford for the appeal.

Stuart Henderson, contra.

FERGUSON, J.]

[June 1.

IN RE ALGER AND THE SARNIA OIL COMPANY.

Vendor and purchaser—Security for damages caused by unsuccessful appeal—Items of—Who liable for.

In winding-up proceedings in which A. had been declared the purchaser of the property (an oil refinery) by the report of a referee, leave to appeal to the Court of Appeal (an appeal to a judge having been dismissed) was granted to two unsuccessful tenderers upon condition of giving \$2,500 security for any damages A., "as purchaser of the property," might sustain if the appeal failed. The appeal having failed, the damages were found by a referee as (1) cost of caring for the property; (2) interest on the purchase money; (3) taxes; and (4) deterioration.

Held, on an appeal from this report, that until a purchaser gets possession the care of the property, the taxes, and the deterioration should be borne by the vendor, and that as it was not shown that A. had paid his purchase money or set it apart he was not entitled to interest on it, and consequently that none of the items of damage found by the referee could be recovered by A. under the security given, as he was not damnified in those particulars.

W. R. Meredith, Q.C., for the appeal.

E. R. Cameron, contra.

Div'l Court.]

JOHNSTON v. BURNS.

[Feb. 27, June 7.

Assignments and preferences—Sale of debts—Action by purchaser—Set-off of barred claim—R.S.O., c. 124, s. 20, s-s. 5—S. 23.

This case, reported *ante* p. 160, was carried to the Divisional Court, and argued on Feb. 27, 1893, before BOYD, C., and FERGUSON, J.

J. M. Clark for the appeal.

Frank Denton, contra.

June 7, 1893. Judgments were given by both judges unanimously sustaining the decision of the trial judge.

Practice.

Q.B. Div'l Court.]

CLARK v. CAMPBELL.

[June 10.

Evidence—Pending motion—Examination of party as witness on—Rule 578—Consequence of default—Contempt of court—Suspending order.

Under Rule 578, a party may require the attendance of the opposite party for examination as a witness upon a pending motion; and the consequence of default on the part of the party to be examined is to put him in contempt.