

Ct. Ap.]

NOTES OF CANADIAN CASES.

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could have been paid into Court, viz., under Order XXVI. O. J. A., unless under a special direction of the Court: the money was not paid in conditionally, but absolutely, in satisfaction of the plaintiff's claim, as an alternative defence, and therefore it was properly withdrawn by the plaintiff.

Per BURTON and PATTERSON, JJ.A.—The defence of payment into Court set up was not strictly pleadable, but was a notice to the plaintiff that the money was in Court to answer his demand if he established it. Money paid into Court under a defence is not inevitably to be regarded as paid in under Order XXVI. O. J. A. The inference that payment into Court is made for immediate satisfaction must yield to a direct notice that it is not made for that purpose; and such notice sufficiently appearing from the pleading, the money was improperly withdrawn by the plaintiff.

McCarthy, Q.C., for the appeal.

Gormully, contra.

[October 13.]

MOFFATT v. SCRATCH.

Disclaimer—Grant from Crown—Surrender—Tax sale—Surveyor-General's return.

The judgment of the Common Pleas Division (8 O. R. 147) was affirmed, PATTERSON, J.A., dissenting.

J. H. Ferguson, for the appellant.

Falconbridge and *T. M. Morton*, for the respondent.

[October 13.]

HATELY ET AL. v. MERCHANTS' DESPATCH CO. ET AL.

Carrier—Bill of lading—Negligence—Liability—Condition.

The judgment of OSLER, J.A., at the trial (4 O. R. 723) was affirmed against the defendants (appellants), the Merchants' Despatch Co., with costs; but the judgment of the Queen's Bench Division (4 O. R. 723) as to the defendants, the Great Western S. S. Co., was reversed, and the action was dismissed as against these defendants. The question of the costs of the defendants, the Great Western R. W. Co., was reserved for further consideration.

Millar, for the defendants, the Merchants' Despatch Co.

Moss, Q.C., and *Aylesworth*, for the plaintiff.

Osler, Q.C., for the defendants, the Great Western S. S. Co.

W. Cassels, Q.C., and *Holman*, for the defendants, the Great Western R. W. Co.

[October 13.]

WHITING v. HOVEY.

Interpleader Issue—Judgment at trial—Appeal.

A motion to quash an appeal to this Court from the judgment of FERGUSON, J., at the trial of an interpleader issue (9 O. R. 314), upon the ground that the decision was merely interlocutory and not appealable, was dismissed without costs, the members of the Court being divided in opinion.

Robinson, Q.C., and *W. M. Hall*, for the respondent.

McMichael, Q.C., for the appellant.

[October 13.]

BEATTY ET AL. v. NEELON ET AL.

Misrepresentation—Action of deceit—Parties.

Held, reversing the judgment of WILSON, C.J., 9 O. R. 385, upon the facts stated in the former report, that the unsatisfactory nature of the evidence, the long delay, the conduct of the parties, and their dealings with the matters in dispute, disentitled the plaintiffs to relief.

Per HAGARTY, C.J.O.—The damage claimed was not for inducing the plaintiff to enter into a partnership or company, but for the injury sustained in the company by the misrepresentations of the defendants, a damage resulting to all the shareholders, and therefore the action should have been by the company.

Per BURTON, J.A., this was a common law action for deceit, and, if maintainable at all, was maintainable only by the plaintiffs to whom the alleged misrepresentations were made.

Robinson, Q.C., *Cassels*, Q.C., and *R. Gregory Cox*, for the appellants.

McCarthy, Q.C., and *J. H. Macdonald*, for the respondents.