The

# Ontario Weekly Notes

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## APPELLATE DIVISION.

JULY 2ND, 1913.

### RE MODERN HOUSE MANUFACTURING CO.

### DOUGHERTY AND GOUDY'S CASE.

*Company—Winding-up—Contributories—Contract with Company to Take Payment for Land in Company-shares—Allotment of Shares—Vendors Acting as Shareholders—Failure to Transfer Land—Breach of Contract—Remedy in Damages.*

Appeal by the liquidator of the company from the decision of MIDDLETON, J., 28 O.L.R. 237, ante 861.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, JJ.A.

G. F. Shepley, K.C., for the appellant.

W. M. Douglas, K.C., and S. W. McKeown, for the respondents.

THE COURT, being equally divided in opinion, dismissed the appeal with costs.

JULY 2ND, 1913.

## BLAISDELL v. RAYCROFT.

## RAYCROFT v. COOK.

*Executors and Trustees—Trust for Sale of Land—Sale Made by Executors Attacked by Parties to Conveyance—Adequacy of Purchase-price—Breach of Trust not Established—Delay in Making Attack—Expenditure by Purchaser in Making Improvements.*

Appeals in the first case by the plaintiffs and in the second case by the defendant from the judgments of BOYD, C., ante 297, in the two actions.

The appeals were heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, JJ.A.

G. F. Shepley, K.C., for the appellants in the first case.

F. J. French, K.C., for the appellant in the second case.

J. A. Hutcheson, K.C., and P. K. Halpin, for the respondent, Raycroft.

The judgment of the Court was delivered by MEREDITH, C. J.O.:—Although the finding of the Chancellor in favour of the reality of the sale to Mrs. Farlinger of the testator's farm was vigorously attacked by counsel for the appellants, we see no reason for doubting the correctness of the finding, which is amply supported by the evidence.

It is beyond doubt that the purchase-price ($4,800) was the full value of the farm, and that, but for the decision of the Grand Trunk Railway Company of Canada to remove its terminals from Brockville to Prescott, it would not be saleable for more at the present time.

The appellants joined in the conveyance to Mrs. Farlinger, and each of them testified that she understood that the purchaser was the executrix, Jane Raycroft, and was willing that she should become the purchaser.

If a finding upon the point were necessary to the determination of the case, I think that the proper conclusion upon the evidence is, that each of them knew that the conveyance was being made to Mrs. Farlinger, but it may be that they understood that she was buying for her mother, Jane Raycroft.

In truth, though the real purchaser was Mrs. Farlinger, she bought upon the understanding that $4,000 of the purchase-money was to be provided by her mother, and, in consideration of this, the mother was to be maintained on the farm during her lifetime by Mrs. Farlinger, who, it was intended, should remove with her husband from the United States, where they resided, to the farm, and that they and Mrs. Raycroft should live together upon it.

This feature of the transaction was not explained to the appellants, and it was urged that the sale could not, therefore, stand.

But the appellants in the first case, who are the only persons interested in having the transaction set aside, admitted on cross-examination that they were quite willing that Mrs. Raycroft should buy the farm for $4,800; and it is clear that, accepting their statements that when they executed the conveyance they thought it was she who was buying, they assented to the sale being made to her.

If they were willing that she should become the purchaser, I am unable to see how it can be open to them, because Mrs. Raycroft was willing to give $4,800 of her own money to Mrs. Farlinger, to enable her to buy, stipulating that in return for it she should be maintained on the farm during her lifetime, to attack the transaction as a breach of trust.

For the reasons given at length by the Chancellor and for the reasons I have mentioned, and especially having regard to the long delay in attacking the transaction and the considerable expenditure that has been made by Mrs. Raycroft in improving the property on the faith of her being the owner of it, I am of opinion that the appellants' case failed and that their action was rightly dismissed.

In the second case, I am of opinion that judgment should be affirmed, and can usefully add nothing to the reasons given by the Chancellor for the conclusion to which he came.

*Appeals dismissed.*

JULY 2ND, 1913.

## RICE v. SOCKETT.

*Contract—Work and Labour—Construction of Silo—Action for Price—Defective Work—Finding of Trial Judge on Conflicting Evidence—Appeal—Counterclaim — Damages for Loss of Crop for Want of Silo—Contemplation of Parties—Evidence—Quantum of Damages.*

Appeal by the plaintiff from the judgment of the County Court of the County of Wellington dismissing an action in that Court, and allowing the defendant $96 on his counterclaim.

The judgment appealed from was upon the second trial of the action; the judgment on the first trial having been set aside and a new trial directed by a Divisional Court: Rice v. Sockett (1912), 27 O.L.R. 410, ante 397.

The second appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, JJ.A.

R. L. McKinnon, for the plaintiff.

J. J. Drew, K.C., for the defendant.

The judgment of the Court was delivered by MAGEE, J.A.:—The amount involved in the plaintiff's claim for construction of a concrete circular silo is $180. The plaintiff was to furnish the cement and doors and do the work. The defendant was to provide the gravel and stone and water. The plaintiff admits that he was to do a first-class job, so far as his own material and the workmanship were concerned.

The defendant alleges that the work is very rough and defective, the concrete improperly mixed so that it does not form a hard, solid wall, and has in many places so little binding that it readily disintegrates, and it would be unsafe to use. He also alleges that two of the series of horizontal reinforcing rods, which were to go entirely round the silo at different heights and to have the ends hooked together and to be imbedded in the cement, do not go around, but stop at the sides of two doors or openings, and, consequently, the ends are not hooked together and do not meet, but are merely bent and anchored in the cement.

It is unnecessary to enter into the question whether, as to these two rods, the failure to fasten them together was owing to a change made, at the defendant's request, in the height of

the doors or openings, or whether, when that change was made, the rods should have been put in a different position. Although the defendant objected to them, and, by changing the interval between the rods, the subsequent ones were hooked together, it does not appear that he in any way required the plaintiff to change the two rods which he objected to, but allowed him to go on and finish the silo.

But on the question of the workmanship in the concrete wall itself, which the learned trial Judge has found to be defective, whatever opinion one might be inclined to form from merely reading the evidence, which is contradictory, the weight to be attached to the statements of individual witnesses is a matter which the trial Judge has so much better an opportunity of forming an opinion upon that an appellate Court would not be justified, in the circumstances, in interfering with his conclusions. He has dealt very fully with the various differences between the parties, and has held that the plaintiff did not in fact perform his contract, and, consequently, cannot claim payment for it.

The evidence was fully dealt with by counsel; but there does not seem warrant for considering that the learned trial Judge did not reach a correct conclusion when he finds lack of sand, which the defendant offered, lack of cement and lack of proper mixing, resulting in a honeycombed or crumbling wall, and when he prefers to believe the defendant, instead of the plaintiff's foreman, who contradicts him.

The defendant has not only resisted payment for the silo, but has counterclaimed for damages sustained through not being provided with a silo for the preservation of a crop of eight acres of corn which, in expectation of its construction, he planted and cultivated; and for this the learned trial Judge has awarded $96 to the defendant. The learned trial Judge appears to have been fully justified in finding that it was in the contemplation of the parties that the silo was to be used for a crop of corn that year. The defendant says that, having no place to put the crop, he left it in the field, feeding it to his cattle as he could, but in that way one-half of his crop was lost. He himself could not give any idea of the amount of his crop, except that it was a good one, nor of its value, nor of his loss. The learned trial Judge appears to have arrived at the sum of $96 by computing the crop as twelve tons to the acre and worth $2 per ton in the field, and the loss at one-half the crop. But the same expert witness, whose valuation the learned

Judge accepts in this regard, puts the difference between the use or non-use of a silo as only from four to twenty or thirty per cent. in favour of the former, which perhaps he means to be exclusive of the loss from vermin and birds; but he apparently considers the main loss of leaving the corn in the field to be the exposure to the weather, which he puts at twenty per cent., or more if till late in the season. The defendant made no effort to dispose of any of the corn, nor, so far as appears, to increase his stock of cattle for the purpose of using it. It appears that it is unusual to sell corn; but it does not appear that farmers or others might not be ready to buy. The defendant did nothing to minimise his loss, and, singularly enough, grew as much corn the following year, having no silo. Taking his statement that he lost half the corn, there is no evidence that such loss was the result of not having the silo. Upon the evidence $40 would, I think, cover all that the defendant should pay.

The judgment should, I think, be varied by reducing the damages on the counterclaim to that amount. With that exception the appeal should be dismissed, but without costs.

*Judgment accordingly.*

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## HIGH COURT DIVISION.

BRITTON, J. JUNE 30TH, 1913.

### HAMILTON v. SMYTH.

*Contract—Sale of Mill Property—Mutual Mistake—Return of Money Paid—Tender—Payment into Court—Interest—Costs.*

Action for specific performance of a contract to sell to the plaintiff the mill and equipment of the Taplin Timber Company at Sassiganaga Lake and for damages for delay, or, in the alternative, for damages in lieu of specific performance.

George Mitchell, for the plaintiff.
R. McKay, K.C., for the defendant.

BRITTON, J.:—The defendant was the owner of a mill and machinery, belting and accessories, which he desired to sell.

He was in negotiation with one McClellan, who desired to purchase. The plaintiff knew of this, and, while these negotiations were on, the plaintiff wrote to the defendant, making an offer of $1,100 for the property. This the defendant declined. George Ross, of Cobalt, was acting for the defendant in endeavouring to effect a sale to McClellan. Ross had no power to execute any bill of sale, or to receive any money. That was for the defendant, and Ross did not attempt to, nor did he, in fact, exceed his power.

On the 31st December, 1912, the defendant, upon the advice of Mr. Mitchell, who was not then acting for the plaintiff, accepted the plaintiff's offer of $1,100, the plaintiff paying $400 cash and giving two notes of $350 each for the balance. Both the plaintiff and defendant then supposed that the property was at Sassiganaga Lake, and in the undisputed constructive possession and control of the defendant. The fact was, that, unknown to the defendant and without his consent, McClellan had wrongfully taken possession of this property, and removed it from Sassiganaga Lake, and held it, afterwards refusing to give it up to the defendant, or to the plaintiff.

The plaintiff, upon the purchase by him, had the right to possession of the said property, but he did not exercise that right, nor did he attempt to do so, and he refused to take legal proceedings to get possession, and he refused to assist the defendant to do so, but contended that he had a legal claim and right of action against the defendant.

The defendant, therefore, was obliged to stand upon his legal rights.

There was no warranty on the part of the defendant, that the property was at Sassiganaga Lake; and, according to the plaintiff's own contention, the sale was completed and valid and he had the right to the property. Had he taken the necessary steps to get it, he could have obtained possession of it. As soon as it came to the knowledge of the defendant that the property had been taken possession of and removed, he did all that he could without the plaintiff's assistance; and, finding that the plaintiff insisted upon attempting to hold the defendant, and was not willing to take proceedings to get possession, the defendant tendered to the plaintiff the money he had paid, and interest thereon, and a return of the notes, and cancelled the sale.

There was no express agreement on the part of the defendant to make delivery of the property. There was simply the sale made in good faith. I think that the plaintiff must be held

to have accepted the situation, by his delay and his refusing to take any proceeding to recover possession.

It appears that McClellan took possession on the 18th December. The plaintiff's agreement was on the 31st December, and he did not inform the defendant of his inability to get possession until March, 1913.

I think that this is a case of mutual mistake, in each party thinking the property was at the lake, and in the immediate possession and control of the defendant; and the agreement, therefore, cannot be insisted upon.

As there was a tender, and as the money was treated by the parties as if paid into Court, the judgment will be for $400 and interest at five per cent. from the 31st December, 1912, to the date of the tender, the 31st March, 1913, and at 4 per cent. from the date of tender to judgment.

Judgment will be for the return of the notes and for cancellation of the alleged agreement.

If the case is carried by the plaintiff no further, the judgment will be without costs; otherwise costs after tender to be paid by the plaintiff to the defendant.

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LENNOX, J. JUNE 30TH, 1913.

## BALDWIN v. CHAPLIN.

*Injunction—Interim Order—Powers of Local Judge—Ex Parte Order—Practice—Jurisdiction — Motion to Continue Injunction—Riparian Rights—Obstruction—Balance of Convenience—Bonâ Fide Question for Trial—Amendment—Addition of Plaintiffs—Terms.*

Motion by the plaintiff for leave to amend the proceedings by the addition of co-plaintiffs and to continue an interlocutory injunction granted ex parte by the Local Judge at Chatham.

W. M. Douglas, K.C., and J. G. Kerr, for the plaintiff.

J. W. Bain, K.C., and Christopher C. Robinson, for the defendants.

LENNOX, J.:—The plaintiff's application to amend is granted, upon the condition agreed to in Court, namely, that the added plaintiffs will be in the same position as to liability for costs and damages as if they had been originally made parties.

Aside from the amendment, the motion is to continue an interlocutory injunction order granted ex parte by the Local Judge at Chatham.

Consolidated Rule 357 applies to all Judges, and ex parte orders are only to be granted when the Judge is satisfied that the delay caused by notice of motion might entail serious mischief. In Thomas v. Storey, 11 P.R. 417, it was said that no order of any moment should be made ex parte except in a case of emergency. In a recent case (Capital Manufacturing Co. v. Buffalo Specialty Co., 3 O.W.N. 553), Mr. Justice Middleton reports Lindley, J., as saying ([1876] W.N. 12): "Prima facie an injunction ought not to be granted ex parte. In cases of emergency it will be granted, but an injunction is rarely granted without hearing both sides." See also Kerr on Injunctions, 4th ed., p. 555. This, as I say, applies to all Judges; but there is more than this to be considered when the application is to a Local Judge of the High Court, under Con. Rule 46. The Local Judge has no jurisdiction unless the extra time required to apply in the regular way "is likely to involve a failure of justice." With very great respect, I am of opinion that this is a case in which the learned County Court Judge should not have acted.

This does not, however, necessarily determine the question of whether or not the injunction should be continued until the trial. This is a case involving the determination of important and conflicting questions of fact, and numerous, unusual, and exceptionally difficult questions of law. It is not a case of apparently unquestionable rights on the one side and apparently flagrant and impudent disregard of these rights by the other; it is rather a case of two parties bona fide asserting opposing rights, of a character so exceptional and intricate that even after a trial it may be difficult enough for the Court to determine them.

The plaintiff is the owner of land adjoining a lake, and asserts that the defendants' works obstruct him or will obstruct him in the exercise or enjoyment of his riparian rights—that the works of the defendants not only interfere with the general right of the public in navigable waters, but that he suffers or will suffer special and peculiar damage, and that he is the owner of the land upon which the works are being built. These are all disputed questions of fact to be determined at the trial: Bell v. Quebec, 5 App. Cas. 84. And, on the other hand, it is not the case of a palpable trespasser coming in to rob and run, for the defendants claim as licensees for value under a lease from the

Ontario Government, expressly providing for the erection and operation of these works. Whether right or wrong in their claim of title, they are giving earnest of good faith by the expenditure of large sums of money, and their readiness to conform to the navigation laws and regulations of the Dominion Parliament.

The question then for me to decide is, not the many and involved questions which will arise at the trial—of fact and of law—but the balance of convenience, the avoidance of loss to either party as far as may be. Would damages compensate the plaintiff? Can the status quo be restored after the trial if the plaintiff succeeds? I think so.

"A man who seeks the aid of the Court by way of interlocutory injunction must, as a rule, be able to satisfy the Court that its interference is necessary to protect him from that species of injury which the Court calls irreparable, before the legal right can be established upon trial:" Kerr on Injunctions, p. 14.

It is not right that I should discuss the remedy in case it is found at the trial that the defendants are in the wrong—it is enough for me to say that the rights of the parties are by no means clear—that there are bona fide questions to be tried—that, so far as appears, both parties are honestly asserting what they think are legal rights—that complete justice can be done at or after the trial, and the best interests of all parties will be conserved, not by a quasi-adjudication of the rights of the parties now, but by leaving them in abeyance until the case is heard.

The trial Judge can best deal with the question of costs, and they will be reserved for him.

Except as to the amendment above provided for, the motion will be dismissed and the injunction dissolved.

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FALCONBRIDGE, C.J.K.B. JULY 3RD, 1913.

## BREED v. ROGERS.

*Injunction—Interim Order—Nuisance—Coal-yard—Noise—Increase—Preponderance of Convenience.*

Motion by the plaintiff for an interim injunction restraining the defendants from committing a nuisance by erecting a coal-handling plant and carrying on a coal business on lands south of the Belt Line Railway and north of Lawton avenue, in the city of Toronto.

S. H. Bradford, K.C., and T. A. Silverthorne, for the plaintiff.

G. F. Shepley, K.C., and G. W. Mason, for the defendants.

FALCONBRIDGE, C.J.:—It does not appear to me that the plaintiff has made out a sufficiently strong case to justify the Court in interfering by way of interlocutory injunction.

While there is no great dispute about the actual facts, the plaintiff asks me to draw one inference and the defendants another; and, in my opinion, the proper inference can be drawn only by the eliminative process of a trial.

The damage, if any, cannot be irreparable—it can be easily estimated in dollars by a Judge or Master.

The affidavit of Alfred Rogers shews that the preponderance of convenience—public as well as private—is wholly against the propriety of granting an interlocutory injunction.

The injunction will not now be granted, but the motion will stand over until the trial. The parties may deliver pleadings in vacation, and the defendants are to speed the trial. Costs of the motion to be costs in the cause unless the Judge at the trial shall otherwise order.

The authorities on which I base this judgment are as follows: Halsbury's Laws of England, vol. 17, pp. 217-8; vol. 21, pp. 531, 534; Kerr on Injunctions, 3rd ed., p. 174; Lord Cowley v. Byers (1877), 5 Ch.D. 944; Earl of Ripon v. Hobart (1834), 3 My. & K. 169; Magee v. London and Port Stanley R.W. Co. (1857), 6 Gr. 170; Pope v. Peate (1904), 7 O.L.R. 207; and see Rushmer v. Polsue, [1906] 1 Ch. 234, as to increase of noise in an already noisy neighbourhood.

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MALOT V. MALOT—LENNOX, J.—JUNE 30.

*Marriage—Action for Declaration of Nullity—1 Geo. V. ch. 32—Constitutionality — Marriage of Children — Evidence.]* — After the judgment of the 5th June, noted ante 1405, the learned Judge heard the evidence of Carl Malot; and now stated that he was not convinced that the facts in the case had been honestly or fully disclosed; and he was very far from being convinced, assuming that he had jurisdiction, as to which he entertained the very gravest doubts, that upon the merits the plaintiff was entitled to relief. The story the parties related was a most improbable one—and, all things taken into account, he was not able

to say that he believed it; if he were making an order, it would be adverse to the plaintiff's claim. In view of the opinion of the learned Judge as to jurisdiction, it was not necessary that he should give effect to his views as to the result of the evidence; the parties might be able to put it in a more favourable light at another time. He simply declined to make any order. F. A. Hough, for the plaintiff.

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ALLEN v. GRAND VALLEY R.W. CO.—KELLY, J.—JUNE 30.

*Contract — Supply of Goods for Railway Construction — Action for Price—Guaranty—Defence of Sureties—Variation in Terms of Contract—Evidence—Term of Credit—Expiry before Action Brought—Counterclaim.*]—Action for the recovery of moneys claimed as a balance due for goods supplied to the defendant company for use in the construction of their railway. The plaintiffs claimed against the defendant company as principal debtors and against the defendants Verner and Dinnick, respectively the president and vice-president of the defendant company on the 23rd July, 1909, as sureties by virtue of a written guaranty of that date, as follows (addressed to the plaintiffs): "In regard to the order which the Grand Valley Railway Company have placed with your firm for the special work for the Brantford Street Railway Company, amounting to some $60,000, the first work to be delivered in two months or sooner if possible, and the terms on each consignment to be fifty per cent. on delivery and the balance sixty days after delivery, we wish to state that, in connection with the said contract and these terms of payment, we hereby personally undertake to make these payments if the railway company fail to do so." One of the grounds of defence relied upon by the defendants Verner and Dinnick was, that there was such variation in the terms of the contract, in relation to what was called "job 34," as discharged them from liability, or that, so far as that job was concerned, they did not guarantee the payment for it, as it was finally agreed upon. Upon a review of the evidence, the learned Judge holds that the sureties must have intended to include in their guaranty the price of a complete lay-out of job 34; Dinnick's evidence was, that when he entered into the guaranty he knew that the contract had been made, but that he did not look at the terms and the prices. The sureties were chief officers of the defendant company and had knowledge of the company's

operations. It was not until the estimates of the 24th September were agreed upon that the specifications of the complete lay-out intended by the proposal of the 13th July and the price of that job were finally arrived at; and, in that view of the matter, the sureties were not discharged from liability. The guaranty fixed the limit of the sureties' liability at $60,000, and the total contract-price, including the £2,411.8.4 which was finally agreed upon for job 34, was less than $60,000.—The defendant company set up that, at the date of the commencement of the action, the plaintiffs had no cause of action; that the goods sued for were not delivered on or before the 9th June, 1911; and that the sixty days' term of credit had not expired. The learned Judge said that this defence was not borne out by the evidence. The period of credit dating from the delivery of the goods had not expired at the time the action was begun; and it was not, therefore, premature.—The defendant company counterclaimed damages for failure to deliver within the time contracted for, and for loss owing to alleged imperfect and incomplete and defective material and work supplied and done by the plaintiffs; but no evidence was submitted to substantiate these claims.—Judgment for the plaintiffs for the amount sued for, with interest and costs. Counterclaim dismissed with costs. H. E. Rose, K.C., and G. H. Sedgewick, for the plaintiffs. F. Smoke, K.C., for the defendants.

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EMPIRE LIMESTONE CO. v. McCARROLL—LENNOX, J.—JULY 2.

*Master's Report—Appeal—Findings of Fact—Evidence—Costs.*]—Appeal by the defendants from the report of the Local Master at Welland upon a reference to determine a question of boundaries. The defendants complained that the Master's findings were contrary to the evidence; that evidence was improperly admitted and refused; that the defendants' counsel was treated unfairly; and that the defendants had no notice of the settling of the report. The learned Judge thought that the Master erred in his rulings as to both the admission and rejection of evidence on several occasions, and that counsel for the defendants had some ground for complaint as to interruptions and statements by the Local Master during the hearing; but was not able to come to the conclusion that anything was done or omitted which prevented the fair trial of the matters referred, or that the conclusions reached and reported by the Local Master were erroneous. Appeal dismissed; but, as there was ground for complaint, without costs. H. D. Gamble, K.C., for the defendants. W. M. German, K.C., for the plaintiffs.

RE PIGOTT AND KERN—FALCONBRIDGE, C.J.K.B.—JULY 2.

*Vendor and Purchaser—Objection to Title—Registered Agreement—Probability of Litigation—Doubtful Title.*]—Motion by Pigott, the vendor, under the Vendors and Purchasers Act, for an order declaring that the purchasers' objection to the vendor's title had been satisfactorily answered, and that a certain registered agreement did not form a cloud upon the title. The Chief Justice said that counsel for the vendor put the case ingeniously and ably as to the agreement of the 9th January, 1909, being spent or effete so as to preclude the possibility of trouble arising therefrom to purchasers. But, in view of the declared attitude of Mrs. Bell and the vis inertiæ of the Bank of Hamilton, and the possible assertion of right of purchasers from the Cumberland Land Company, he was obliged to hold that there is a reasonable probability of litigation to which the purchasers might be exposed; and that the title must, for this reason only, be classed as doubtful: Armour on Titles, 3rd ed., pp. 280-1; Reid v. Bickerstaff, [1909] 2 Ch. at p. 319; In re Nichols and Van Joel, [1910] 1 Ch. 43. No costs. C. A. Moss and F. Morison, for the vendor. W. S. McBrayne, for the purchasers.

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ST. CLAIR V. STAIR—FALCONBRIDGE, C.J.K.B.—JULY 4.

*Discovery—Affidavit on Production—Claim of Privilege for Reports—Identification—Sufficiency—Documents Obtained for Information of Solicitor—"Solely."*]—Appeal by the defendants the "Jack Canuck" Company from the order of the Master in Chambers, ante 1437, directing the appellants to file a better affidavit on production. The Chief Justice said that the learned Master did not have the opportunity of considering Swaisland v. Grand Trunk R.W. Co., 3 O.W.N. 960, in the light of certain English cases, for the simple reason that they were not cited to him: Taylor v. Batten (1878), 4 Q.B.D. 85 (C.A.); Bewicke v. Graham (1881), 7 Q.B.D. 400 (C.A.); Budden v. Wilkinson, [1893] 2 Q.B. 432 (C.A.); in accordance with which the reports in question were sufficiently identified. As the Master said, the rule requiring the use of the word "solely" was not of universal application. There would be no question if the documents were title deeds, etc. The learned Chief Justice with some diffidence, expressed the opinion that it was not necessary here. Appeal allowed and order of the Master reversed. Costs here and below to the appellants in any event. R. McKay, K.C., for the appellants. W. E. Raney, K.C., for the plaintiff.

CASEY V. KANSAS—LENNOX, J.—JULY 4.

*Injunction — Interim Order — Refusal to Continue—Breach —Contempt of Court — Ignorance — Costs.*]—Motion by the plaintiff to continue an interim injunction restraining the defendant from proceeding with the erection of a building, and to commit the defendant for contempt of Court in disobeying the injunction order. LENNOX, J., said that the defendant was a foreigner; and it was satisfactorily shewn that he did not understand his position until he consulted a solicitor, and he then went no further. He did not knowingly offend; but, as he had occasioned expense to the plaintiff, he must bear the costs of the branch of the motion relating to committal, fixed at $10. The plaintiff's counsel said that the work was now practically complete. There appeared to be a bona fide dispute between the plaintiff and defendant; and there was nothing to shew, or even strongly suggest, that the plaintiff was more likely to be right in his contention than the defendant. It was a case in which full justice could be done at the trial, if the parties had not the good sense to come to an agreement meantime. It was simply not a case, as it had been developed, for continuing the interim injunction. Without hampering the action of the trial Judge in any way, the injunction should be dissolved, and the costs reserved for the trial Judge. E. E. Wallace, for the plaintiff. W. C. Hall, for the defendant.

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JEWELL V. DORAN—BRITTON, J.—JULY 4.

*Conversion of Chattels—Return or Payment of Value—Reference.*]—Action by the executor of Melvin J. Clark, deceased, who was the owner of the Windsor Hotel at Sault Ste. Marie and of the furniture and furnishings therein, to recover from the defendants the value of a part of the furniture and furnishings said to have been converted by the defendants. The learned Judge, in a written opinion, summarised the facts, made certain findings thereon in favour of the plaintiff, and directed that judgment should be entered for the plaintiff for the return to him by the defendants of the furniture, furnishings, and chattels belonging to the plaintiff, in the possession of the defendants, or for payment of their value; and for a reference to the Local Master at Sault Ste. Marie to inquire, ascertain, and report what furniture, furnishings, and chattels belonging to

the plaintiff were taken possession of by the defendants, or any of them, and what of said property is now in the possession of the defendants, or any of them; and what is the present value of all such property of the plaintiff as is in possession of the defendants or any of them; and also the amount of loss, if any, to the plaintiff by reason of any of the property being lost, damaged, or destroyed while in the possession of the defendants, where such loss has not been occasioned by ordinary wear and tear. Further directions and costs reserved. P. T. Rowland, for the plaintiff. V. McNamara, for the defendants.