The
Ontario Weekly Notes

Vol. I. TORONTO, JULY 27, 1910. No. 44.

HIGH COURT OF JUSTICE.

MIDDLETON, J. JUNE 30TH, 1910.

RE PURSE AND FORBES.

Vendor and Purchaser—Title to Land—Registered Plan—Order Amending — Road Allowances — Title Vested in Abutting Owner—Surveys Act.

Motion by a vendor for an order under the Vendors and Purchasers Act declaring that he was able to make a good title to certain lands, and that the purchaser's objections were not valid

G. H. Gray, for the vendor.

J. Douglas, for the purchaser.

MIDDLETON, J.:—Kobe and Hisgo streets were laid out on plan 708, and the lands adjoining these streets were sold. Subsequently, the York Loan Company, having acquired title to the lands, desired to amend the plan and substitute another survey and subdivision of their estate, which involved the laying out of the lands covered by the streets as part of the new lots. The municipality had not assumed the streets for public use, and assented to an order made by the County Court Judge for an alteration of the plan in the manner proposed. The company being the owners of lands abutting upon the closed allowances for highways, the lands forming such allowances, by virtue of sec. 39 of the Surveys Act, amended by 63 Vict. ch. 17, sec. 22, belong to them (the company.)

The effect of the registration of the plan and the order for its amendment is to divest the title of the original owner to the road allowance and to vest it in the abutting owner.

The order will, therefore, declare that the objection taken by the purchaser is not a good and valid objection to the vendor's title to the lands in question. No costs.

TEETZEL, J. JULY 14TH, 1910.

*GOLDSTINE v. CANADIAN PACIFIC R. W. CO.

*ROBINSON v. CANADIAN PACIFIC R. W. CO.

Railway—Carriage of Live Stock—Contract—Approval by Board of Railway Commissioners — Injury to Persons in Charge Travelling Free—Neglect of Servants of Railway Company to Obtain Assent to Terms of Contract — Liability — Indemnity from Owners and Shippers—Duty to Inform Persons in Charge —Implied Obligation.

Trial of issue between the defendants and Burns and Sheppard, third parties.

The plaintiff in the first action was administrator of the estate of one Goldstine, who was killed on a train of the defendants, through the negligence of the defendants' servants; and the plaintiff Robinson was injured on the same occasion.

At a former sittings judgment was entered by consent against the defendants in favour of the plaintiffs for $1,750 and $750 respectively, without costs; and the question for determination in each case was whether the third parties were bound to indemnify the defendants against payment of these sums.

At the time of the accident the deceased Goldstine and the plaintiff Robinson were each in charge of a car-load of horses shipped from Toronto to points in the western provinces under special contracts for shipment of live stock, signed by the defendants' agent and by Burns and Sheppard, the third parties, as shippers. The deceased Goldstine was a member of the firm of Fawcett & Goldstine, who were the consignees named in the contracts, and Robinson was an employee of that firm.

The contracts were in the exact form approved by the Board of Railway Commissioners on the 17th October, 1904, under the provisions of the Railway Act.

The rate of freight charged was that authorised under Canadian classification No. 14 (15th December, 1908), and approved of by the Board of Railway Commissioners, in cases where the stock is shipped under the terms and conditions of the special contract, which classification contains the following rule: "The owner or his agent must accompany each car-load or less than car-

* These cases will be reported in the Ontario Law Reports.

load of live stock, as the case may be, when the distance is over 100 miles, unless special authority is first obtained . . ."

Neither Robinson nor Goldstine signed the special contract, nor was any pass issued and delivered to them embodying its terms, nor was there evidence that either of them knew the contents of the special contract; hence there was nothing to defeat their common law right to damages occasioned by the negligence of the defendants' servants.

W. Nesbitt, K.C., and G. A. Walker, for the defendants.

W. R. Smyth, K.C., for the third parties.

TEETZEL, J.:— . . . The third parties endeavoured to establish at the trial that they were not the owners of the horses . . . . I am of opinion, upon the evidence, that for the purpose of determining the rights of the parties in this action, they must be deemed to be both owners and shippers. . . .

Though the evidence does not shew that the third parties expressly nominated Goldstine and Robinson to take charge of the horses while in transit, I think they must be treated as their nominees under the special contract and as their agents within the meaning of the above general rules. They were certainly in charge when the horses were loaded upon the cars, and on the face of each special contract was written, with the concurrence of the representative of the third parties, when the special contract was delivered . . . , the words, "Pass man in charge." No money was paid for the fare of either Goldstine or Robinson, the only consideration for carrying them free apparently being the restricted liability of the defendants as to the stock and their freedom from liability to the person carried, conferred by the special contracts.

Quite independently of the special contract having been approved by the Board of Railway Commissioners, it was, according to the decisions in Hall v. North Eastern R. W. Co., L. R. 10 Q. B. 437, and Bicknell v. Grand Trunk R. W. Co., 26 A. R. 431, quite competent for the shippers or their nominees to agree with the defendants to travel at their own risk of personal injury, in consideration of being allowed to travel free. . . .

The defendants rest their claim against the third parties on two grounds: (1) that, under the provisions of the special contracts, it was the duty of the third parties to inform the plaintiffs of the terms and conditions of the special contract before allowing or requiring them to travel upon the defendants' train as their nominees in charge of the horses; (2) that, under the contract, there was an implied agreement by the third parties to indemnify

the defendants against liability for injury to the persons carried free.

It was not pretended that the third parties in any way communicated to either Goldstine or Robinson the terms of the special contract.

I have been unable to find any authority which would support the claim that the third parties owed any duty to the defendants to inform Goldstine and Robinson of the terms of the special contract, and I do not think that on any principle can such a duty be rested. There is nothing in the contract itself to suggest that the defendants would rely on the plaintiffs being so informed by the shippers, but, on the contrary, the contract itself and the general rule in classification shew that the defendants were not to rely on any such suggested duty, because . . . both on the back of the contract and in the rule express provision is made for the person in charge to sign the special contract. It was, therefore, the clear duty of the defendants' agent, in order to deprive the person in charge of his common law rights against the defendants, in case of injury by negligence of their servants, to make him aware of the condition on which he was being carried free, and to obtain his express assent thereto. It must be assumed that the third parties knew of these provisions of the contract and rule, and they had to suppose that, before the person in charge was permitted to travel upon the defendants' train, their agent would perform his duty in regard thereto. . . .

I think the most that can be said is, that by omitting to inform the person in charge of the terms of the contract, the third parties took the risk of the person in charge refusing to accept or sign the contract, when presented to him by the defendants; in which case, if no one else was placed in charge, two results might follow under the contract, viz.: (a) the defendants would be "relieved from all liability to carry" the stock; or (b), "if the company carry such live stock without it being so accompanied, it shall not be liable for any loss or damage due to the live stock not being so accompanied and cared for."

Then as to liability under an implied agreement to indemnify, counsel for the defendants cited The Moorcock, 14 P. D. 64, and Ogdens Limited v. Nelson, [1903] 2 K. B. 287, [1904] 2 K. B. 410, [1905] A. C. 109. . . . Hamlyn v. Ward, [1891] 2 K. B. 488. . . .

Now, looking at the express terms of the written contract, including the rule set forth in classification 14, intended for the guidance of both parties, and having regard to all the circumstances under which the contract was entered into, I find it im-

possible to conclude that there must be implied an agreement on the part of the third parties to indemnify the defendants . . in order to give the transaction such efficacy as both parties must have intended it to have. There would have been no claim to be indemnified against if the defendants' agent had performed his duty to his employers, and it surely would be contrary to principle to imply an agreement by the third parties to protect the defendants from the consequences of their own carelessness.

Judgment must be entered in each action dismissing the defendants' claim against the third parties with costs.

DIVISIONAL COURT. JULY 16TH, 1910.

COPELAND v. LOCOMOTIVE ENGINEERS MUTUAL LIFE AND ACCIDENT INSURANCE ASSOCIATION OF CLEVELAND, OHIO.

Accident Insurance — Locomotive Engineer — "Total and Permanent Loss of Sight"—Practical Loss of Sight—Construction of Rules of Benefit Society.

Appeal by the plaintiff from the judgment of BOYD, C., dismissing without costs an action upon an accident insurance certificate.

The plaintiff was a locomotive engineer on the Grand Trunk Railway, and on the 26th August, 1905, he suffered an accident upon the effects of which this action was based.

The plaintiff had in June, 1905, applied to become a member of the defendant association, for $1,500 insurance; in his application he agreed to be governed by the rules and by-laws of the association — the application to "form the basis of the contract between the society and the insured." His application was accepted.

The accident caused serious and lasting injury to one eye of the plaintiff; and he made a claim upon the defendants under sec. 42 of the constitution and by-laws, which is as follows: "Any member of this association . . sustaining the total and permanent loss of sight in one or both eyes shall receive the full amount of his insurance. In case of loss of sight, certificate must be made out on a form furnished by the association and signed by two experienced oculists. Where the eye or eyes have not been removed from the socket, certificate will be filed at home office

for one year from the date of examination, at which time the member will be required to furnish two additional certificates from two experienced oculists certifying to the total and permanent blindnes of said member.

The claim was refused by the defendants, and the plaintiff brought this action.

The Chancellor found that it was not "an absolute loss of sight." He considered that it was "a practical loss of sight, so far as this man is an engineer." And again: "On the evidence, it cannot be said that this man, however much he may be hampered by the loss of vision, is totally and permanently blind."

The appeal was heard by FALCONBRIDGE, C.J.K.B., BRITTON and RIDDELL, JJ.

J. R. Logan, for the plaintiff.

W. J. Hanna, K.C., for the defendants.

FALCONBRIDGE, C.J.:—The wording of sec. 42 is perfectly plain, and is susceptible of no interpretation differing from that given to it by the Chancellor. It is a hard case, but we cannot make bad law to help the plaintiff out.

There would seem to be at least one other difficulty in the way of his recovery, in that his claim has not been favourably passed upon by the president and general secretary-treasurer of the association: sec. 46. No fraud is charged.

The appeal must be dismissed, with the usual penalty of costs, if exacted.

BRITTON, J., gave brief reasons in writing for the same conclusion.

RIDDELL, J., also wrote an opinion, in which he set out the facts at length, made references to the evidence, and quoted many sections of the constitution and by-laws of the defendants. His conclusion also was that the appeal should be dismissed with costs.

SUTHERLAND, J. JULY 20TH, 1910.

RE McCRACKEN AND TOWNSHIP OF SHERBORNE.

Municipal Corporations — By-law Limiting Number of Tavern Licenses in Township to One—Liquor License Act, secs. 18, 20 —Municipal Act, sec. 330—Monopoly—Bona Fides—Quashing By-law—Costs.

Application by John McCracken, a resident hotelkeeper and ratepayer of the township of Sherborne, to quash by-law No. 200 of the united townships of Sherborne, McClintock, Livingstone, Lawrence, and Nightingale, being a by-law to limit the number of tavern licenses in the united townships, reading as follows:—

"Whereas a petition of the ratepayers has been presented to the council of the townships asking that the number of licenses be cut down to one.

"And whereas the said municipality has not the required population for more than one tavern license, it is judged expedient to limit the number of licenses in the said townships to one.

"Therefore the council of the corporation of the united townships . . . in accordance with sec. 20, ch. 245, R. S. O. 1897, enacts as follows:—

"That the number of tavern licenses to be issued in the said townships . . . for the ensuing year beginning on the 1st day of May, 1910, shall be limited to one. And this by-law shall continue in force for each and every year after, until amended or repealed."

J. Haverson, K.C., for the applicant.

A. Mills, for the respondents.

SUTHERLAND, J.:—At present there are two existing licenses in the united municipality, both in the village of Dorset, situate or partly situate therein. One of these licenses is held by one McIlroy in connection with the Iroquois Hotel, said to be a large and well-appointed hotel, with ample accommodation for the travelling public going to or passing through Dorset into said municipality, and well situated for the purpose. The other is held by the applicant, whose place is said to consist of a small frame building situate on the same highway as the Iroquois Hotel, about 100 yards distant therefrom, and which has very limited accommodation.

The applicant contends that sec. 20 of the Liquor License Act, R. S. O. 1897 ch. 245 . . . must be read in the light of sec. 330 of the Consolidated Municipal Act, 3 Edw. VII. ch. 19. . . . He contends also that, reading these two sections together, the effect of the by-law is in effect to create a monopoly, and to give to the holder of the one license to be issued thereunder an exclusive right within the municipality. . . .

[Reference to In re Barclay and Township of Darlington, 12 U. C. R. 86, 90, 92, and In re Greystock and Township of Otonabee, ib. 458, 461, 462.]

In each of the cases referred to, it was apparent that the councils of the municipalities were not acting in good faith, and that they were really endeavouring to secure, as far as possible, prohibition in townships of considerable extent, and containing somewhat numerous populations, without submitting that question itself to the electors.

In the present case the reeve of the municipality sets out in his affidavit that he travels a good deal throughout this united municipality, and is familiar with its needs; that it is composed of wild and unsettled land, and the most of it is rocky and unsuited for settlement; that, by the voters' list for the year 1909, there are only 65 voters in the township of Sherborne, 20 in the township of McClintock, 5 in the township of Livingstone, 3 in the township of Nightingale, and in the township of Lawrence no votes; that there is a population of not much more than 200 in the whole of the said townships, and a large proportion of these reside in the village of Dorset. He expresses the opinion that there is absolutely no need whatever for more than one hotel, and that it is not in the interests of either the residents of the municipality or the general public having occasion to visit the said municipality that there should be another hotel. He also states in his affidavit that the council acted in the bona fide belief that they were acting in the best interests of the residents of the municipality and of the travelling public in passing the said by-law.

The applicant did not attempt to attack the bona fides of the members of the council in the matter. Apart altogether from what is stated in the affidavit of the reeve, I would, therefore, assume that they acted in perfect good faith. The by-law itself recites that a petition of the ratepayers had been presented asking that the number of licenses be cut down to one.

Some reference was made by each side on the argument to sec. 18 of the Liquor License Act. This section reads as follows: "The

number of tavern licenses to be granted in the respective municipalities shall not in each year be in excess of the following limitations: in cities, towns, and incorporated villages respectively: (a) For the first 250 of the population one tavern license."

Counsel for the applicant argues that this section has no application to townships, and that a reason for this is that, in the case of a village of a population of 250 or less, one hotel could easily be reached by its inhabitants who desire to use it; while in the case of a township, which may be of very much more extended dimensions, this would not be true.

Counsel for the municipality, on the other hand, argues that sec. 18 is helpful in a consideration of this case in this way. If a village having a population of 250 were reduced below that number, and before such reduction had more than one license, thereafter it could only have one. If a village of less than 250 can only have one license, why not a township of a population of less than that number?

I could not hold, upon the facts disclosed in the affidavit of the reeve of the municipality in question, that there was any intention on the part of the council to create a monopoly, and I am loath, under the circumstances, to set aside the by-law, believing, as I do, that one hotel is ample for the requirements of the people of the united townships in question. I am afraid, however, that the result of the by-law is in effect to create a monopoly. I think I am bound by the authorities in question. What I understand Chief Justice Robinson to mean when he used the words . . . "The best and perhaps only answer that we can give is that the tribunals of the country to which jurisdiction is given in this respect must be relied upon for exercising a just and sound discretion," is this: that where it is a question of a reduction in the number of licenses down to any number in excess of one, the Courts will exercise a just and sound discretion in the matter, and not permit councils to act in an arbitrary or improper way.

The effect of sec. 20 of the Liquor License Act, when read with sec. 330 of the Consolidated Municipal Act, and in the light of the decisions referred to, appears to me to be that no township council can pass a by-law providing that the number of licenses shall be limited to one. While the facts in this case seem to warrant a reduction to one license, if they would in any case, I have reluctantly come to the conclusion that the by-law in question is invalid and must be set aside. As the council acted in apparent good faith, I should prefer to make no order as to costs. The applicant was,

however, compelled to resort to the Court for the relief asked, and, if I am right in according it to him, I think the costs will follow the result.

The motion will be granted with costs.

FALCONBRIDGE, C.J.K.B. JULY 20TH, 1910.

THOMAS v. WALKER.

Company — Electric Railway Company—Special Act — General Electric Railway Act—Contract—Sanction of Shareholders — Necessity for — Incomplete Contract — Liability of Directors.

Action for damages for breach of a contract.

J. M. McEvoy, for the plaintiff.

A. H. Clarke, K.C., and N. A. Bartlet, for the defendants.

FALCONBRIDGE, C.J.:—The plaintiff launches his action in two ways: first, as against the company he sues on a certain contract (which is set out in extenso in the statement of claim), alleging that the company broke that contract, and that he suffered loss and damage; secondly, he claims that, if, for any reason, it should be held that the contract is not binding on the company, then the individual defendants ought to be held liable.

The plaintiff proved the execution of a contract, under the corporate seal of the defendant company, and signed by the defendant Walker, president, and the defendant Coburn, secretary. The alleged contract was never carried out, the defendants contending that the contract was entered into on the understanding that it should not become effective until the company should be able to sell or borrow money upon its bonds sufficient to secure the success of the company's undertaking. It is unnecessary to decide whether such understanding existed or not, in view of the law governing certain other branches of the case.

The defendant company was incorporated by the statute 4 Edw. VII. ch. 96; by sec. 25 of which it was provided that the several clauses of the Electric Railway Act (R. S. O. 1897 ch. 209) should be incorporated with the special Act, and should apply to the company and to the railway to be constructed by it, etc. And also by sec. 16 of the special Act the directors were

empowered to enter into contracts with individuals, etc., for the construction or equipment of the railway, etc. This section contains a provision exactly similar to sec. 17 of R. S. O. 1897 ch. 209, i.e., that no such contract should be of any force or validity until sanctioned by a resolution passed by the votes of the shareholders, in person or by proxy, representing two-thirds in value of the paid-up stock of the company at a general meeting specially called.

No such resolution was ever passed at a general meeting of shareholders. This is, in my opinion, a perfectly good defence as far as the company is concerned. The parties dealing with the company or with the directors were at least bound to read the Electric Railway Act and the special statute. And so the case does not fall within the principle laid down in Royal British Banking Co. v. Turquand, 5 E. & B. 248. See Lindley on Companies, 5th ed., p. 167.

It may well be also that no completed agreement was ever arrived at; the plans having been made part of the agreement, and those not having been signed by the plaintiff: Gooch v. Snarr, 34 U. C. R. 616. I do not consider the decision in Selkirk v. Windsor Essex and Lake Shore Rapid R. W. Co., 21 O. L. R. 109, to be in point. There the express language of the special Act authorising the engagement in question was held to prevail. The contract in question in that case was not for construction, etc., within sec. 17 of R. S. O. 1897 ch. 209.

Then as regards the position of the directors, the individual defendants. It does not appear that there was any representation or holding out to the plaintiffs that the contract had been sanctioned by the shareholders. The limits of their authority could be readily ascertained, and the plaintiff, dealing with directors whom he ought to have known to be exceeding their authority (if they did exceed their authority), cannot, in the absence of fraud on their part, obtain any redress against them: Beattie v. Lord Ebury, L. R. 7 Ch. 777; Struthers v. Mackenzie, 28 O. R. 381; Lindley on Companies, 5th ed., pp. 241-242.

The plaintiff fails, both as against the company and the individual defendants. Under all the circumstances, I do not consider it to be a case for costs.

TEETZEL, J. JULY 21ST, 1910.

HAZEL v. WILKES.

Judgment—Foreclosure—Action to Set aside — Irregularities — Waiver by Delay—Purchaser—Trustee under Marriage Settlement—Redemption — Improvement in Value of Property — Lapse of Time—Equitable Discretion of Court.

Action to set aside a judgment of foreclosure, and for redemption.

The action in which the judgment of foreclosure was obtained was in respect of two mortgages dated respectively the 13th September and 31st December, 1888, securing in all about $1,000. The writ of summons in that action was specially indorsed in accordance with the Rules then in force, and was served upon the defendant in that action (the plaintiff in this) on the 16th October, 1889. Wilkes, one of the defendants in this action, was plaintiff in that action. The judgment was entered on the 7th January, 1890, the defendant not appearing, and a final order of foreclosure was made on the 26th March, 1891.

The plaintiff alleged that the judgment and final order of foreclosure were irregularly obtained.

W. S. Brewster, K.C., for the plaintiff.

E. Sweet and H. S. Hewitt, for the defendants.

TEETZEL, J.:—At the trial all the proceedings in the mortgage action were put in, and the plaintiff's counsel pointed out a number of alleged irregularities therein which he urged were sufficient to justify setting aside both the judgment and the final order of foreclosure.

Without deciding whether, upon a motion promptly made in the mortgage action, the proceedings would have been set aside or amended on the ground of irregularity, I do not think that, after the lapse of twenty years since the judgment was signed, such a motion should be allowed, even against the defendant Wilkes.

Nor is it necessary to decide whether, since the Judicature Act, the proceeding should not be by motion in the mortgage action, instead of by an independent action.

Under Con. Rule 311, an application to set aside process or proceedings for irregularity must be made within a reasonable time. The plaintiff has not objected within a reasonable time, and I think he must be treated as having waived the irregularities.

I also think that, upon the facts in this case, the defendant Fisken is a purchaser of the land affected by the judgment and final order of foreclosure, and therefore as such would not be affected by the irregularities complained of: Gunn v. Doble, 15 Gr. 655; Shaw v. Crawford, 4 A. R. at p. 385; and Independent Order of Foresters v. Pegg, 19 P. R. 80. See sec. 58, sub-sec. 11, of the Judicature Act, and Holmested & Langton, p. 105.

While it is true that the land is held by Fisken, with other property, in lieu of property originally held by him under a marriage settlement in which the wife and children of the defendant Wilkes are interested, and which may far exceed in value the amount of the original property settled, there is not, so far as the evidence discloses, any trust imposed upon Fisken under which Wilkes would be entitled to get the surplus, should there be any, beyond the value of the property originally covered by the marriage settlement. But, even if Fisken is not a purchaser within the meaning of the cases and sub-sec. 11 of sec. 58 of the Judicature Act, and if the plaintiff's rights are to be determined as in a redemption action in which the mortgagee is sole defendant, I am of opinion that no circumstances exist, in view of the lapse of time since the foreclosure, upon which the Court could exercise a judicial and not a mere capricious discretion and allow the plaintiff to redeem. . . .

[Reference to Thornhill v. Manning, 1 Sim. N. S. 451; Campbell v. Holyland, 7 Ch. D. 166, 172; Platt v. Ashbridge, 12 Gr. 105; Trinity College v. Hill, 10 A. R. 99; Scottish American Investment Co. v. Brewer, 2 O. L. R. 369; Miles v. Cameron, 9 P. R. 502.]

Now, the property in this case is vacant, unimproved land, a few miles from Thunder Bay, and in the vicinity of Port Arthur. Originally, I judge from the plaintiff's evidence, when the mortgages were made, it had a speculative value as a mining property; but more recently its proximity to Port Arthur has given it a greatly increased speculative value for building sites; and the plaintiff now asserts that it could be sold for a sum far in excess of the amount he would be liable to pay if allowed to redeem.

For many years after the foreclosure, I should infer from the evidence, the property could not have been sold for more than enough to pay the mortgage indebtedness. Does the fact that, on account of changed conditions in the neighbourhood, many years after the foreclosure, the property has been greatly enhanced in value, or the fact that until now the plaintiff has not had the financial ability to redeem, furnish any reason or circumstance upon which the Court can exercise a judicial discretion and allow

the mortgagor to redeem and reap the unexpected profit, instead of the mortgagee, who has, all these years, had to forego his interest, besides having to pay taxes to protect an unproductive property from being sold by the municipality, and who also took the risk of losing his investment through the property being unsaleable?

I am of opinion that it does not; and, in view of the great delay on the plaintiff's part in seeking to redeem, I am unable to find in the evidence any fact or circumstance upon which a judicial discretion could be exercised in his favour. The Courts always discourage neglect and laches and claims of plaintiffs to equitable relief where they have unreasonably slept upon their rights. . . .

Some evidence was given by the plaintiff of payments made after the foreclosure, but in this he was contradicted by the defendant Wilkes, and, as between them, I would find that no such payments were made.

The action must be dismissed, and with costs, if exacted.

DODGE v. YORK FIRE INSURANCE CO.—FALCONBRIDGE, C.J.K.B.—JULY 14.

Fire Insurance—Builder's Risk—Building "in Course of Construction."]—Action to recover $2,000 on a policy issued by the defendants insuring against fire buildings while in course of construction—a "builder's risk." The buildings were being put up for the North Ontario Reduction and Refining Co., and the plaintiff was a mortgagee. The buildings were damaged by fire on the 1st November, 1909. No work was done on the premises during the currency of the policy; the buildings were never completed; the workmen left in April. A watchman was employed from the 15th April to the 18th May, when he too was discharged. Then he nailed up everything and put padlocks on doors, etc. He continued to take to sort of neighbourly interest in the premises up to the time of the fire. Held, that, on this state of facts, the building could not in any fair sense be considered as "in course of construction"—it was not like the case of operations being suspended temporarily by reason of stress of weather or other immediate conditions. Upon this and other grounds, the action was dismissed with costs. W. J. McWhinney, K.C., and E. P. Brown, for the plaintiff. M. H. Ludwig, for the defendants.

SEMMENS v. HARVEY—DIVISIONAL COURT—JULY 15.

Sale of Goods—Bill of Sale—Goods Brought into Stock to Replace others sold—Authority of Husband of Vendor as Agent—Trover—Value of Goods.]—Appeal by the plaintiffs from the judgment of the District Court of Nipissing in favour of the defendant in an action in detinue and trover for certain goods which the plaintiffs alleged were the property of Elizabeth Nickle, and were sold and assigned by her by bill of sale to the plaintiffs, who demanded them of the defendant, in whose possession they were, and who refused to deliver them. The defence was that Elizabeth Nickle brought these goods into stock to replace stock sold by her belonging to the defendant; and the Bills of Sale Act, R. S. O. 1897 ch. 148, was relied on. Held, by the Divisional Court (FALCONBRIDGE, C.J.K.B., BRITTON and RIDDELL, JJ.), upon the evidence, that the goods were the property of Elizabeth Nickle when she made the bill of sale to the plaintiffs, and there was no proof that she ever authorised her husband to sell or give the goods to the defendant. Appeal allowed with costs, and judgment to be entered for the plaintiffs for the value of the goods. FALCONBRIDGE, C.J., and BRITTON, J., agreed that the value should be fixed at $130, subject to a reference, if the defendant desires to take it, at her own risk as to costs. RIDDELL, J. (dissenting as to this), was of opinion that there was no satisfactory evidence of the value of the goods, and that there should be a reference as to value. G. Grant, for the plaintiffs. W. N. Ferguson, K.C., for the defendant.

STOKES v. REYNOLDS—SUTHERLAND, J.—JULY 18.

Summary Judgment — Con. Rule 603—Special Indorsement of Writ of Summons—Defence.]—An appeal by the defendant from the order of the Master in Chambers, ante 1051, was dismissed with costs. J. M. Ferguson, for the defendant. C. F. Ritchie, for the plaintiff.

NORTHERN LUMBER CO. v. MILNE—SUTHERLAND, J.—JULY 21.

Interim Injunction—Contract — Timber.] — Motion by the plaintiffs to continue an interim injunction restraining the de-

fendants from dealing with or disposing of a large quantity of lumber lying in La Cloche lake, and restraining them from removing from the timber limits in question in the action any white pine timber, and from selling or disposing of any white pine timber cut upon the limits until some 678,808 feet claimed by the plaintiffs have been delivered to them. SUTHERLAND, J., after setting out the facts, said that it would be impossible for him upon an application of this kind, to pass upon the question whether the plaintiffs had or had not lost their rights under the contract in question in the action, or whether they had any personal remedy under it against the defendants. To grant an interim injunction, on the material filed, might result in serious damage and possibly in permanent loss to the defendants; while, on the other hand, it would look as though any claim the plaintiffs might have would be reasonably protected by the timber now cut and uncut upon the limits in question. In such circumstances, he was unable to see his way to continue the injunction. The trial of the action could take place in the autumn, and should be expedited. Motion enlarged until the trial, and costs thereof to be disposed of by the trial Judge. H. H. Dewart, K.C., for the plaintiffs. W. Bell, K.C., for the defendants.