The
Ontario Weekly Notes

VOL. XVI. TORONTO, MAY 9, 1919 No. 8

APPELLATE DIVISION.

SECOND DIVISIONAL COURT. APRIL 28TH, 1919.

*TORONTO GENERAL HOSPITAL TRUSTEES v. SABISTON.

Landlord and Tenant—Agreement for Lease—Rent to be Fixed by Arbitration—Liability of Tenant to Pay as soon as Rental Fixed—Liability Continuing until Forfeiture of Lease—Recovery in Action of Sum Representing Rental and Unpaid Taxes with Abatement.

Appeal by the defendant from the judgment of MIDDLETON, J., 15 O.W.N. 333.

The appeal was heard by MEREDITH, C.J.C.P., BRITTON, RIDDELL, and LATCHFORD, JJ.

H. H. Dewart, K.C., for the appellant.
H. D. Gamble, K.C., for the plaintiffs, respondents.

THE COURT dismissed the appeal with costs.

SECOND DIVISIONAL COURT. APRIL 29TH, 1919.

*REX v. SPENCE.

Prohibition—Police Magistrate—Jurisdiction—Information Laid under Order in Council Made pursuant to War Measures Act, 1914, 5 Geo. V. ch. 2—Alternative Methods of Trial—Summary Proceedings under Part XV. of the Criminal Code or by Indictment—Construction of secs. 6 and 10 of Act—Authority for Order in Council—Intra Vires—Election of Crown to Proceed before Magistrate—Power of Court to Prohibit Magistrate—Discretion.

Appeal by the defendant from the order of MASTEN, J., ante 142, refusing prohibition.

* This case and all others so marked to be reported in the Ontario Law Reports.

The appeal was heard by MEREDITH, C.J.C.P., BRITTON, RIDDELL, LATCHFORD, and MIDDLETON, JJ.

R. McKay, K.C., for the defendant.

Edward Bayly, K.C., for the Police Magistrate.

MEREDITH, C.J.C.P., reading the judgment of the Court, said that it was contended that the order in council upon which the prosecution was based was illegal, because no power to make it was conferred upon the Governor in Council by the War Measures Act, 1914, upon which only it was sought to be supported. The offence with which the defendant was charged was one based upon the order in council, and one which admittedly could be created under the powers conferred upon the Governor in Council by sec. 6 of the Act; but it was contended that the provisions of sec. 10 restricted the powers conferred by sec. 6 to such an extent that the order in council, in so far as it provided for the manner of prosecution for offences created by it, was ultra vires

The learned Chief Justice quoted the provisions of the order in council, Consolidated Orders, respecting Censorship, May 21, 1918, Canada Gazette, vol. 51, June 8, 1918, pp. 4296, 4297: Order II., sec. 2 (1), prohibiting all persons from receiving or having in their possession any book or document containing objectionable matter; Order III., sec. 1 (1), making it an offence to contravene any of the provisions of these Orders; sec. 3 (1), providing a penalty; and sec. 3 (2), providing that such penalty may be recovered or enforced either by indictment or by summary proceedings and conviction under the provisions of Part XV. of the Criminal Code. (These Consolidated Orders are republished in the Canada Gazette, November 16, 1918, vol. 52, p. 1683 et eq., for the purpose of correcting the former publication as to the date, which should be May 22, 1918.)

The learned Chief Justice was unable to consider that enough was said in sec. 10 of the Act to take away the whole effect of the wide and plain words of sec. 6—"and shall be enforced in such manner and by such courts, officers and authorities as the Governor in Council may prescribe."

To give effect to the defendant's contention would be to make the order in council nugatory as to all penalties and make all that have been imposed illegal because no lawful means of imposing them has been prescribed under sec. 10.

The decision on the question of ultra vires should thus be against the defendant.

The Chief Justice was, besides, not fully convinced that prohibition would lie in such a case as this.

If the Court had no power, that ended the matter; if the Court had power, and a discretion, no sufficient reason had been shewn why the case should not be left to take the ordinary course of a criminal case under the Criminal Code.

Appeal dismissed with costs.

SECOND DIVISIONAL COURT APRIL 29TH, 1919.

TENNESSEE FIBRE CO. v. SMITH.

Promissory Note—Action Brought in Name of Company Having Interest in—Note Payable to Solicitors for Company—Note Endorsed by Solicitors but not until after Action Brought—Action Begun by Specially Endorsed Writ in County Court—Judgment for Plaintiff Company Entered in County Court without Amendment of Writ—Rights Determinable as of Date of Writ, but Proceedings not a Mere Nullity—Addition of Solicitors as Plaintiffs as of Date of Writ—Power of Appellate Court to Make Amendment without Request.

AN appeal by the defendant from the judgment of the County Court of the County of York (DENTON, Jun. Co. C.J.), in favour of the plaintiffs, in an action upon a promissory note. The proceedings were taken under the Rules respecting specially endorsed writs. Several points were taken on the appeal. In respect of the first point the facts were as follows. The defendant owed to the plaintiffs, who had their head office in Memphis, Tennessee, a considerable sum, and it was arranged that he should give a note for the amount to Messrs. MacGregor & MacGregor, of Toronto, solicitors for the plaintiffs, which was done. The note became due and was not paid; the plaintiffs sued in the County Court of the County of York, by Messrs. MacGregor & MacGrego , their solicitors, but without their endorsing the promissory note sued upon. The note was, however, endorsed before the hearing in the Coun'y Court.

The appeal was heard by MEREDITH, C.J.C.P., BRITTON, RIDDELL, LATCHFORD, and MIDDLETON, JJ.

Erichsen Brown, for the appellant.

J. P. MacGregor, for the plaintiffs, respondents.

THE COURT dismissed the appeal upon all the grounds taken.

In respect of the first point it was held (1) that the rights of the plaintiffs must, in the absence of an amendment, be determined as of the teste of the writ, and consequently judgment should not have been entered for the plaintiffs without an amendment.

(2) Following Thompson v. Equity Fire Insurance Co. (1908), 17 O.L.R. 214; reversed in the Supreme Court of Canada, Equity Fire Insurance Co. v. Thompson (1909), 41 Can. S.C.R. 491; but reinstated in the Judicial Committee, Thompson v. Equity Fire Insurance Co., [1910] A.C. 592; that the plaintiffs had an

interest in the promissory note, and therefore the proceedings were not a mere nullity.

(3) Following the same case, that the Court had the power to amend by adding the solicitors as parties *nunc pro tunc* as of the teste of the writ, and this should have been done in the County Court.

(4) That this Court had the power to amend the proceedings in that way, and should do so in order to do justice in the premises, although the amendment had not been asked for in the Court below or in this Court.

(5) That upon the amendment being made by adding Messrs. MacGregor & MacGregor as parties plaintiffs to the action, the appeal should be dismissed.

SECOND DIVISIONAL COURT. APRIL 30TH, 1919.

*RE MONARCH BANK OF CANADA.

MURPHY'S CASE.

Company—Winding-up of Banking Company—Contributory—Subscription for Shares—Acceptance—Notice of Allotment—Oral Agreement—Promissory Note.

Appeal by the liquidator from the order of FERGUSON, J.A., in the Weekly Court, 14 O.W.N. 294.

The appeal was heard by MEREDITH, C.J.C.P., BRITTON, RIDDELL, LATCHFORD, and MIDDLETON, JJ.

W. K. Fraser, for the appellant.

W. J. McWhinney, K.C., for the contributory Murphy, respondent.

THE COURT allowed the appeal with costs and restored Murphy's name to the list of contributories.

SECOND DIVISIONAL COURT. APRIL 30TH, 1919.

RE MONARCH BANK OF CANADA.

SIMON'S CASE.

Company—Winding-up of Banking Company—Subscription for Shares—Contributory—Allotment Made and Notified to Subscriber—Attempt to Shew, after Winding-up Order, that Subscription Made upon Conditions not Fulfilled—Oral Variation of Written Application—Mistake or Misrepresentation.

Appeal by John Simon from the order of FERGUSON, J.A., in the Weekly Court, 14 O.W.N. 295.

The appeal was heard by Meredith, C.J.C.P., BRITTON, RIDDELL, LATCHFORD, and MIDDLETON, JJ.

W. J. McWhinney, K.C., for the appellant.

W. K. Fraser, for the liquidator, respondent.

THE COURT dismissed the appeal with costs.

HIGH COURT DIVISION.

FALCONBRIDGE, C.J.K.B. APRIL 28TH, 1919.

O'CONNOR v. FITZGERALD.

Husband and Wife—Contract between—Assignment by Wife to Husband of Beneficial Interest in Policies of Insurance on Life of Husband—Consideration—Promise to Make Will in Certain Way—Will Made but Revoked—Death of Husband Leaving Will Disposing of Estate otherwise than as Agreed—Action by Wife against Executors—Right to Proceeds of Insurance Policies—Joint Policy on Lives of Spouses—Dower—Election.

Action by Cecelia Ann O'Connor, widow of Stephen Henry O'Connor, against the executors of her husband's will, for dower out of his lands and for damages for the detention of dower. The plaintiff alleged that she had elected to take dower, but that the defendants had neglected to allot or assign dower to her.

By an amendment made at the trial, the plaintiff set up that, without independent legal advice, she, on the 2nd December, 1916,

assigned to her husband the proceeds ($11,000) of certain insurance policies upon his life, under which she was the sole beneficiary, in consideration of his making a will in the manner agreed upon between them; that the husband did make such a will, but subsequently revoked it; that, upon the death of the plaintiff's husband, there having been no notice to the insurance company of any assignment, and no change in the beneficiary, the company issued a cheque for $11,000 payable to her order; that she, without independent legal advice and without consideration, being induced by the defendants, endorsed the cheque to them as her husband's executors and the trustees of his estate under a will subsequently made by him, which did not carry out the agreement with her; and that the defendants had received and retained the proceeds of the cheque; and the plaintiff claimed $11,000 and interest.

The action was tried without a jury at Peterborough.

H. H. Davis, for the plaintiff.

FALCONBRIDGE, C.J.K.B., in a written judgment, found the facts to be as stated by the plaintiff in her amended pleading; and said that she was clearly entitled to a return of the $11,000: Walker v. Boughner (1889), 18 O.R. 448.

As to one of the policies, a joint policy upon the lives of the husband and wife for $9,000, see Griffiths v. Fleming, [1909] 1 K.B. 805, per Vaughan Williams, L.J., at p. 815, sub fin.

It followed that she could not elect to accept benefits under the will, instead of dower. If anything had been done by her which would seem to indicate an election in that way, it was done in ignorance of her rights and without independent advice—if she had inadvertently accepted any benefit under the will, credit might be given for the value thereof upon the insurance-moneys.

But the preferring by the plaintiff of the claim for the insurance-moneys and the allowance thereof were (although the assignment which she executed did not specifically state that it should be in lieu of dower) inconsistent with her now also having dower out of the lands.

Costs to all parties out of the estate; those of the executors (with whose conduct no fault was to be found) as between solicitor and client.

MULOCK, C.J.Ex. APRIL 29TH, 1919.

HORNE v. HUSTON AND MERCHANTS BANK OF CANADA.

Gift—Deposit of Money in Savings-bank Account to Credit of Intended Donee—Instructions to Bank not to Notify Donee until after Death of Depositor—Evidence—Intention—Parting with Control of Fund—Present Irrevocable Gift, not Gift of Testamentary Nature.

Action by the administrator with the will annexed of the estate of Louisa J. Bement, deceased, for a declaration that certain moneys deposited by her in the Merchants Bank of Canada were moneys of the estate and payable to the plaintiff as administrator.

See the note of Horne v. Huston and Canadian Bank of Commerce (1918), ante 93.

The action was tried without a jury at Sandwich.

J. H. Rodd and R. S. Rodd, for the plaintiff.

A. St. George Ellis and P. R. Pococke, for the defendants.

MULOCK, C.J.Ex., in a written judgment, said that on the 1st May, 1916, the deceased personally deposited with the defendant bank, at Windsor, to the credit of her brother, the defendant Huston, $10,000, handing the amount to the bank-manager, who, on her instructions, filled up a deposit-slip, with the date, the full name of the defendant Huston, the amount, and this memorandum: "Full address and instructions will follow. Do not notify." He then handed to her a savings deposit-book, with number 2219, and a credit of $10,000. He also opened an account in the ledger with the same number, shewing $10,000 to the credit of Huston. About a month later, the deceased called at the bank and gave the manager Huston's address and signature, and certain instructions, upon which the manager entered the address in the ledger, with a description of Huston as "brother of Mrs. Louisa J. Bement," adding these words: "Deposited by Mrs. Bement. She desires the fact to be kept from him until after her death." And, at the head of the account: "Most particular. Do not notify." About a year later, the deceased called at the bank for the purpose of having $500 taken from the deposit and sent to Huston for his own use. The manager informed her that she had no control over the fund. She appeared to be satisfied with this view of the situation, and then arranged with the manager that the bank should send Huston a draft for $500, she in his name giving a

receipt therefor. This was carried out, a draft was sent, and she signed the name "H. B. Huston" to a receipt for the money, "to be charged to account 2219."

The evidence shewed that the testatrix made the deposit for the purpose of benefiting her brother and with the full intention that the fund should never be returned to her but remain his. Thus no presumption of a resulting trust in her favour arose. The deposit standing in his name alone, he became legal owner and entitled, under sec. 96 of the Bank Act, to withdraw it and to give the bank a sufficient discharge in respect thereof.

The brother did not, until after his sister's death, know of the deposit having been made; but a voluntary transfer of property to a person, without his knowing of it at the time of transfer, if made in such manner as to pass the title, vests the property in the transferee subject to his right to repudiate it on his learning of the transfer: Standing v. Bowring (1885), 31 Ch. D. 282; and Huston did not repudiate the deposit to his credit.

It was said that the gift was in its nature testamentary; but the evidence shewed that, at the time of making the deposit, the deceased's instructions to the banker were, simply, not to notify her brother. The plaintiff argued that the later instructions, "She desires the fact to be kept from him until after her death," controlled the nature of the gift and shewed it to be testamentary, and Hill v. Hill (1904), 8 O.L.R. 710, was cited. But the facts of that case were materially different. In this case the sister deposited the money in the sole name of the brother and for his exclusive benefit, she retaining no dominion over or beneficial interest in. These circumstances deprived the gift of any testamentary character. The later instructions did not take from the deposit the character of an unqualified, irrevocable, and present gift; the donor had no interest in it at the time of her death and had no testamentary control over it.

There should be judgment declaring the fund to be the property of the defendant Huston and dismissing the action with costs to be paid by the plaintiff to both defendants.

CLUTE, J. MAY 1ST, 1919.

*SHEEHAN v. MERCANTILE TRUST CO. LIMITED.

Contract—Services Rendered to Master—Promise to Remunerate at Death of Master—Instrument in Writing Signed by Promisor Sued upon as Promissory Note—Bills of Exchange Act, sec. 176—Evidence of Promise—Statute of Frauds—Death of Promisor—Will Admitted to Probate Containing no Bequest to Servant—Action against Executors of Promisor—Corroboration—Evidence Act, sec. 12 — Amendment of Pleadings — Plaintiff Entitled to Recover for Breach of Contract or upon Quantum Meruit—Costs.

Action by Lottie Maida Sheehan against the executors of Edman Brown, deceased, to recover $10,000 upon an instrument, called by the plaintiff a promissory note, signed by the testator, and said to have been dated on or about the 13th March, 1913. The instrument, when produced at the trial, appeared to have been mutilated—the date was not upon it, though the signature was.

The action was tried without a jury at Hamilton.

W. M. McClemont, for the plaintiff.

A. J. Russell Snow, K.C., for the defendants.

CLUTE, J., in a written judgment, said that Edman Brown was a money-lender, and was, at the time the instrument was said to have been signed, about 80 years old. The plaintiff had since before the year 1901 been his bookkeeper, and she remained in his employment down to the time of his death on the 17th November, 1915. The testator's wife died about the 9th September, 1910. The plaintiff was for many years not only the bookkeeper of the deceased, but his secretary and the manager of his business; she nursed his wife for a long time, and was housekeeper after the wife's death, and nursed the plaintiff during his illness. The plaintiff alleged that while his wife was alive the deceased promised to marry the plaintiff on his wife's death and to make provision for her in his will if she would nurse the wife until her death, which the plaintiff did. After his wife's death he did not marry the plaintiff; but, before the wife's death, he made a will, dated the 2nd June, 1910, in which he bequeathed the plaintiff the income of $10,000, "the said income to start one month after my death and my wife's death." This bequest the deceased purported to cancel by crossing it out in ink and by a memorandum, probably made early in 1913. About this time, while the plaintiff continued in charge of the deceased's business, he took in another

housekeeper, Mrs. S.; and in what purported to be a codicil to the will mentioned, he made a bequest in favour of Mrs. S.; this was on the 27th February, 1913. The codicil was not witnessed; and on the 8th April, 1913, he made a memorandum on the margin cancelling the bequest.

The plaintiff said that the testator told her he was engaged to marry Mrs. S., but that she (the plaintiff) could remain on as bookkeeper and secretary. She told him that, if he married Mrs. S., the will he had made would be cancelled; and thereupon, she said, he promised to give her $10,000 in lieu of the provision in the will, and signed the instrument sued upon. This was about the 13th March, 1913. The note was mutilated—what remained of it read: "Hamilton. This is to certify that I have this day given to Miss Maida Sheehan a promise of $10,000; Miss Sheehan to have P t, at my death. Edman Brown." The signature was not disputed, but the date and amount were not admitted. The learned Judge accepted the plaintiff's story as a true statement of what took place.

A further document was put in by the plaintiff, as follows: "1913. Hamilton. July 27. To whom it may concern. You will please pay to the bearer any money due to her as such collection is authorised by me. Yours respectfully, Edman Brown."

The testator made a new will on the 15th June, 1915, in which he made the following bequest: "Allow Lottie Maida Sheehan $3 per week to be paid weekly none of these bequests to be paid within three years after my death except Lottie Maida Sheehan her share to start in two months after my death I leave myself power to add to or deduct from any bequest aforesaid named." Across the signature the testator afterwards wrote a memorandum of cancellation.

On the 5th August, 1915, the testator executed a will, in which he named the defendants as executors, and of which they obtained letters probate. In this will he made no bequest to the plaintiff, but made a bequest of the interest on $10,000 to Helen H , his last housekeeper, for her natural life.

On the 15th September, 1915, the testator signed another will in which he gave the plaintiff $10,000, to be accepted by her in full satisfaction of any claims that she might have against his estate. This will was not properly witnessed, and so could not be proved.

The instrument upon which the plaintiff sued was not a promissory note: sec. 176 of the Bills of Exchange Act; Dasylva v. Dufour (1866), 16 L.C.R. 294; it might be regarded as a certificate that the deceased had promised the plaintiff $1,000—as a further assurance for the promise that he had made to give her $10,000 at his death.

The learned Judge was of opinion that the Statute of Frauds

did not apply, and that there was ample corroboration to satisfy the Evidence Act, sec. 12.

Although the plaintiff could not recover upon the document sued on as a promissory note, she was entitled, upon the facts of the case, to recover either upon the contract of the deceased to pay her $10,000 or upon a quantum meruit; and, having regard to the whole circumstances of the case, $10,000 was a reasonable sum to allow upon the quantum meruit basis.

The pleadings should be amended in accordance with the evidence and findings.

There should be judgment for the plaintiff for $10,000 with costs of the action. The plaintiff's claim was properly contested by the defendants, who should have their costs as between solicitor and client out of the estate—the plaintiff's claim and costs to have priority.

ROSE, J. MAY 1ST, 1919.

*HUDSON AND HARDY v. TOWNSHIP OF BIDDULPH.

Municipal Corporations—Claim against Township Corporation for Injury to Sheep—Dog Tax and Sheep Protection Act, R.S.O. 1914 ch. 246, secs. 17, 18—Dog-tax Levied but Sheep-valuers not Appointed—Ascertainment of Damage by Council—Refusal to Proceed with, after Passing of New Act, 8 Geo. V. ch. 46—Injury Occurring before Passing of New Act—Application of New Act—Interpretation Act, sec. 15 (b), (c)—Recovery of Damage in Action Brought after Passing of New Act.

Action by the owners of sheep injured and killed by the dogs of an unknown owner, to compel the defendants, the Municipal Corporation of the Township of Biddulph, in which township the sheep were killed, to pay the amount of the damage sustained.

The action was tried without a jury at London.

J. M. McEvoy, for the plaintiffs.

W. R. Meredith, for the defendants.

ROSE, J., in a written judgment, said that the plaintiffs had, on the land of the plaintiff Hardy, 130 sheep. On the night of the 1st February, 1918, dogs attacked the flock and severely injured many of the sheep; 23 were found lying on their sides, injured but not dead, and were taken into the barn. When the dogs got in, Hardy was away from his land, but they were still

there when he returned home. When they saw him they ran away. He followed their tracks in the snow as far as they could be followed, and the next day he instituted, and thereafter continued, an inquiry as to the person who owned or kept the dogs, but was unable to find him.

The defendants had collected a dog-tax, but the council had not exercised the power conferred by sec. 17 of the Dog Tax and Sheep Protection Act then in force, R.S.O. 1914 ch. 246, of appointing sheep-valuers.

The plaintiffs applied to the township council for compensation; the council entertained the claim, but adjourned the investigation of it from time to time, and in the end it was found, as the plaintiff said, and as the learned Judge believed, that 98 of the sheep had died from injuries inflicted by the dogs.

At a meeting held on the 1st July the council purported to appoint "sheep-valuers for the year 1918," and also passed a resolution that the council hold a special meeting on the 15th July for the purpose of investigating the plaintiff's claim. On the 5th July the resolution for the special meeting was rescinded, and before the 15th July the Reeve informed the plaintiff Hardy that the investigation could not be held, as the power to hold it had been taken away by the new Dog Tax and Sheep Protection Act, 8 Geo. V. ch. 46, which repealed R.S.O. 1914 ch. 246, and was assented to on the 26th March, 1918.

The learned Judge said that an investigation had now been made—at the trial of this action—and that the plaintiffs' claim for $2,805.60 was a reasonable one. The rumour that the plaintiffs' loss had occurred by disease or in a snow-storm, and not by dogs, was unfounded. The plaintiffs had "made diligent search and inquiry to ascertain the owner or keeper of" the dogs "and that he cannot be found" (R.S.O. 1914 ch. 246, sec. 18).

The defendants contended that the plaintiffs' rights, if any, accrued while the Act R.S.O. 1914 ch. 246, as amended by 6 Geo. V. ch. 56, was in force, and that the power of the Court is to be ascertained without reference to the new Act; and that, if the plaintiffs were entitled to any relief, it must take the form of an order to the council to perform the duties cast upon it by the old Act; and that such an order can be made only by way of the issue of the prerogative writ of mandamus, and not by way of the mandatory order that may be granted in an action.

The learned Judge referred to Eastview Public School Board v. Township of Gloucester (1917), 41 O.L.R. 327; Hogle v. Township of Ernesttown (1917), 41 O.L.R. 394; Noble v. Township of Esquesing (1917), 41 O.L.R. 400; and said that the Noble case bound him to hold that the appropriate remedy was the mandatory order issuable in an action—not the prerogative writ; and

so he was not without jurisdiction even if the case was to be dealt with entirely under the old Act.

The question as to the applicability of the new Act, the learned Judge said, was settled in favour of the plaintiffs by the provisions of sec. 15 of the Interpretation Act, R.S.O. 1914 ch. 1, which provides for the case where an Act is repealed and other provisions are substituted for those repealed—clause (*b*) enacts that, in such case "all proceedings taken under the . . . enactment . . . repealed . . . shall be taken up and continued under and in conformity with the provisions so substituted, so far as consistently may be." The "proceeding taken" in this case, before the repeal of the revised statute, was the making of an application to the council for an award of compensation. Upon that application the plaintiffs had satisfied the council that they had made diligent inquiry to ascertain the owner or keeper of the dogs and that he could not be found. There had been no report by a sheep-valuer, because there was no sheep-valuer; and the next step would have been the ascertainment by the council of the amount of the damage. That step the council decided not to take. The new Act required the ascertainment to be made by the Court in an action where, as here, there was no valuer to make it; and, as the Interpretation Act enacted that the proceedings should be taken up and continued under and in conformity with the provisions of the new Act, there was nothing for the plaintiffs to do but commence their action.

The learned Judge did not wish to be understood as deciding against the applicability of sec. 15 (*c*) of the Interpretation Act.

There should be judgment in favour of the plaintiffs for $2,805.60, with costs.

RE MCBEATH AND PUBLIC SCHOOL BOARD OF SECTION 16 SCARBOROUGH—FALCONBRIDGE, C.J.B.K., IN CHAMBERS—APRIL 29.

Appeal—Motion for Leave to Appeal from Decision of County Court Judge upon Appeal from Award under School Sites Act, R.S.O. 1914 ch. 277, sec. 20—Refusal of Leave.]—Motion by McBeath, a land-owner, for special leave to appeal to a Divisional Court of the Appellate Division from a decision of the Senior Judge of the County Court of the County of York upon an appeal from an award of compensation for land taken for the site of a school building. The appeal to the County Court Judge was under sec. 20 of the School Sites Act, R.S.O. 1914 ch. 277; and sub-sec. 3 of sec. 20 provides that the decision of the Judge shall be final unless special leave to appeal therefrom is given by a Judge of the Supreme Court FALCONBRIDGE, C.J.K.B., in a written judgment, said that the learned County Court Judge had made a very clear and precise finding of fact, which was well supported by the evidence, and the Chief Justice saw no reason to find fault with the decision as to the law. The whole trouble had arisen from McBeath's desire to increase his price from $12 to $16 per foot. The motion should be dismissed with costs. Alfred Bicknell, for McBeath. William Proudfoot, K.C., for the school board.