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APPELLATE DIVISION.

SECOND DIVISIONAL COURT. MAY 9TH, 1916.

HOOK v. WYLIE.

Motor Vehicles Act—Injury to Child by Motor Vehicle on City Highway—Negligence—Onus—Evidence—R.S.O. 1914 ch. 207, sec. 23—Findings of Fact of Trial Judge—Appeal—Damages.

Appeal by the defendant from the judgment of LATCHFORD, J., ante 15.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

W. H. Irving, for the appellant.

A. A. Macdonald, for the plaintiffs, respondents.

THE COURT dismissed the appeal with costs.

SECOND DIVISIONAL COURT. MAY 9TH, 1916.

BANK OF BRITISH NORTH AMERICA v. TURNER.

Summary Judgment—Rule 57—Action on Promissory Notes—Suggested Defences — Appeal from Order for Judgment — Direction for Trial of Question of Liability—Judgment to Stand Pending Trial.

Appeal by the defendant from the order of MIDDLETON, J., ante 196.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

G. S. Hodgson, for the appellant.

L. Larratt Smith, for the plaintiffs, respondents.

THE COURT ordered that the defendant should be permitted to proceed to a speedy trial of the question of his liability; in the

meantime, pending the result of the trial, the judgment and all proceedings taken or to be taken upon it to stand and be unaffected by the trial, just as if this appeal had been dismissed; costs in this Court to be costs in the cause. If the trial be not proceeded with within a month, this appeal to be dismissed with costs. Leave to apply if necessary.

SECOND DIVISIONAL COURT. MAY 12TH, 1916.

LOVELAND v. SALE.

Trusts and Trustees—Tenants in Common—Agency of One for the Others—Sale of Land by Mortgagee—Guaranty Given by Agent —Subsequent Sale to Company—Action by Co-owners to Set aside Transactions—Abandonment—Estoppel—Absence of Fraud.

Appeal by the defendants from the judgment of SUTHERLAND, J., 8 O.W.N. 576.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

M. K. Cowan, K.C., for the appellants.

The plaintiffs, respondents, were not represented.

MEREDITH, C.J.C.P., in a written opinion, said that the four persons concerned in the purchase of the land in question, in the first instance, became tenants in common; but, though the rights of each, having an estate in the whole as well as in part of it, were wide (see Kennedy v. De Trafford, [1897] A.C. 180), they were not wide enough to embrace all that was done by the defendant Sale in respect of it: it must be taken to have been, by some arrangement among the owners, or by the force of circumstances, put in some sort of agency for all of them, with reciprocal liability in regard to the income from the property and the expenditures made upon it by the defendant Sale out of his own pocket. That agency necessarily came to an end when the land was sold to the defendant Little under and by virtue of the mortgage upon it; that sale being a real sale, notwithstanding that the purchaser was made secure from loss in so far as the agreement between the defendant Sale and him, made in connection with that sale, secured him. When the sale was made, the land had become unremunerative; the defendant Sale, still carrying on

the management of it, was losing money through it; and the co-owners not only failed to pay their shares of the losses, but gave no heed to the property in any manner, acting as if they had abandoned all interest in or care for it. The mortgage was long overdue, the security was a precarious one, and the mortgagee was pressing for payment and insisting that the land be offered for sale under the mortgage. Notice of an intended sale was given to all concerned, but was entirely unheeded by the co-owners. An attempt to sell at auction proved abortive. Eventually the defendant Sale induced the defendant Little to buy for $2,575, on the condition that the defendant Sale would protect him against loss to the extent of $2,500—in consideration of which the defendant Sale was to have half the profits in case the transaction proved to be a profitable one to the defendant Little.

The learned Chief Justice said, after stating these facts and others, that the bargain was the best that could be made; and the plaintiffs could not reasonably find any fault with it, even if they had not abandoned all interest in the property.

The defendant Little was unable to make anything out of the land, and the defendant Sale took it over because he was obliged to do so under the conditions of the sale to Little; but soon afterwards the defendants the Windsor Realty Limited took the burden off his hands, and the land was conveyed to that company.

The land being regarded as having appreciated in value, the plaintiffs were now attempting to rip up all these transactions. They had no right in law to do so. Fraud was charged, but was not proved; and the legal title had passed from the mortgagee to the defendant Little, and from him to the defendant company. And, upon the facts stated, there was no reason why equity should aid the plaintiffs; they had abandoned all interest, and were estopped.

The appeal should be allowed with costs and the action dismissed with costs.

RIDDELL, J., agreed in the result.

LENNOX, J., agreed in the result and in the reasons of the Chief Justice.

MASTEN, J., agreed in the result, for reasons briefly stated in writing.

Appeal allowed.

SECOND DIVISIONAL COURT. MAY 12TH, 1916.

CLAYTON v. RAMSDEN.

Principal and Agent—Agent's Commission on Sale of Land—Contract—Construction—Share of Profits on Sale—Quantum Meruit—Damages—Finding of Trial Judge—Appeal.

Appeal by the defendants from the judgment of CLUTE, J., ante 107.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

S. H. Bradford, K.C., for the appellants.

D. O. Cameron, for the plaintiff, respondent.

The judgment of the Court was read by RIDDELL, J. After setting out the facts, he said that the trial Judge was right in holding that there could be no recovery on the commission-agreement; but he (RIDDELL, J.) was unable to agree that there could be any cause of action dehors the agreement. The action was specifically on the agreement; the plaintiff himself swore that that set out the true agreement between himself and Ramsden, and his counsel did not go beyond the document. These considerations were apparently not present to the mind of the trial Judge, but they could not be disputed.

It was, however, contended for the plaintiff that the judgment erred on the first point, and that under the document the plaintiff could hold his verdict.

The agreement was two-fold: (1) an agreement to sell to the plaintiff for $9,000, returning $1,000 to him, i.e., in substance an agreement to sell to him for $8,000; (2) an agreement to pay to the plaintiff $1,000 out of a purchase-price paid by another, amounting to $9,000, that other to be obtained by the plaintiff.

The first part need not be considered; the plaintiff had chosen the second, asserted that he had performed his part, and brought an action on that basis months before the defendant sold the land. There was no pretence that he would or could have paid $8,000 cash; the argument advanced before this Court (for the first time) that the plaintiff was wronged by the sale without giving him a chance to buy, was hopeless and an argument of despair.

The right of a real estate agent to a commission where a sale is not in fact carried out depends on the exact wording of the

contract of agency: Marriott v. Brennan (1907), 14 O.L.R. 508; Fletcher v. Campbell (1913), 29 O.L.R. 501.

Here the commission was to be paid "on the completion of the payment of the purchase-money by the purchaser." The money never was paid; and the evidence shewed that the purchaser never was ready and willing to pay it. It could not be said that the sale failed to go through from any default of the vendor.

It was not unlikely that, had Ramsden and Slater both lived, they would have completed the sale and purchase; but that they did not was certain; and it was equally certain that that was not due to the default of the defendants or their testator.

There was an attempt to shew that one Scott would have bought the property but for the default of the defendants. The answer to that was overwhelming: (1) it was not shewn that Scott was procured by the plaintiff; (2) it was not shewn what price he was prepared to pay.

The appeal should be allowed with costs and the action dismissed with costs.

SECOND DIVISIONAL COURT. MAY 12TH, 1916.

*JAROSHINSKY v. GRAND TRUNK R.W. CO.

Railway—Injury to Pedestrian at Crossing—Evidence—Negligence—Contributory Negligence—Findings of Jury—Supplementary Findings Orally Made in Court—Appeal—Verdict for Plaintiff Affirmed—New Trial Refused.

Appeal by the defendants the Grand Trunk Railway Company from the judgment of FALCONBRIDGE, C.J.K.B., ante 39, in favour of the plaintiff against the appellants for the recovery of $1,254 and costs, upon the findings of the jury at the trial.

The action was brought against the Wabash Railroad Company as well as the Grand Trunk Railway Company, but was dismissed as against the Wabash company before the case went to the jury. The injury on account of which the action was brought was caused by the plaintiff being struck by an engine of the Grand Trunk company when attempting to cross the railway lines.

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

The *questions put to the jury and their answers, together* with what took place when they brought them into Court, were as follows:—

(1) Was the injury which the plaintiff sustained caused by any negligence of the Grand Trunk Railway Company? A. Yes.

(2) If so, wherein did such negligence consist as to the Grand Trunk Railway Company? A. Did not sound proper warning.

THE CHIEF JUSTICE: Do you mean as to the bell or the whistle?

THE FOREMAN: The bell.

(3) Or was the plaintiff guilty of negligence which caused the accident or so contributed to it that but for his negligence the accident would not have happened?

THE CHIEF JUSTICE: Do you find that he was not guilty of negligence? You have not answered that.

THE FOREMAN: The railway.

THE CHIEF JUSTICE: You are satisfied that he did not cause the accident by his own negligence?

THE FOREMAN: Yes.

THE CHIEF JUSTICE: Then I will put down the answer "No."

(4) If you answer "Yes" to the last question, in what did his negligence consist? No answer.

The jury assessed the damages at $1,254.

The Chief Justice added the words "as to bell" to the jury's written answer to question (2), and wrote "No" as the answer to question (3).

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

D. L. McCarthy, K.C., for the appellants.

F. W. Wilson, for the plaintiff, respondent.

MEREDITH, C.J.C.P., was of opinion, for reasons stated in writing, that the trial and the findings of the jury and the method by which they were elicited were in some respects unsatisfactory; but, after an exhaustive review of the evidence, he stated his conclusion that the verdict and judgment could not be interfered with on any ground of right which the appellants had to attack them. "Few indeed," he said, "should be the cases, of this character, in which a new trial should be granted in the absence of such a right—a new trial being such an extremely hard thing upon him who has regularly won the victory."

The appeal should be dismissed.

RIDDELL, J., read a judgment in which he reviewed the evidence

and the authorities. He was also of the opinion that the appeal should be dismissed.

LENNOX, J., was of the same opinion, for reasons stated in writing, in which he also reviewed the evidence.

MASTEN, J., reluctantly agreed in the conclusion. The trial appeared to him to present so many unsatisfactory features that he would have been glad to see a new trial directed, but felt himself overborne by the reasoning of the other members of the Court.

Appeal dismissed with costs.

SECOND DIVISIONAL COURT. MAY 12TH, 1916.

PLANT v. CONSUMERS BOX AND LUMBER CO.

Master and Servant—Injury to Servant—Negligence—Dangerous Condition of Floor of Factory—Failure to Shew that Injury Caused thereby—Weight of Oral Evidence—Documentary Evidence—Reversal of Finding of Trial Judge by Appellate Court—Recovery of Bonus—Costs.

Appeal by the defendants from the judgment of one of the Judges of the County Court of the County of York in favour of the plaintiff in an action for damages for negligence whereby the plaintiff was injured while in the defendants' service; and for $20 said to be owing as a bonus for satisfactory service. At the trial in the County Court, the Judge found in favour of the plaintiff for the $20 and for $130 damages, and gave judgment for the plaintiff for those sums with costs.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

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

J. J. Gray, for the plaintiff, respondent.

LENNOX, J., reading the judgment of the Court, said that the Court would not readily reverse the judgment of the trial Judge on the weight of the vivâ voce evidence as to the negligence of the defendants and the condition of the flooring in their factory at the time of the injury to the plaintiff. The determination of the case, however, did not solely or mainly depend upon the

demeanour of the witnesses or what was deposed to at the trial. There was documentary evidence, and undisputed evidence, of the plaintiff's conduct at the time of and after the happening of the alleged accident, far more cogent and trustworthy than anything he alleged after he was dismissed from the defendants' service. That the floor was out of repair, dangerous, and calculated or liable to cause an accident, was not enough. Did it occasion the injuries now complained of by the plaintiff? Reading the plaintiff's letters, written at the time, complaining of overloading and over-exertion occasioned by the acts of his fellow-employees and of strain and temporary inconvenience, fundamentally different from anything now set up, and reading these letters in the light of all that had since occurred, it was impossible to believe that the condition of the floor occasioned the injury or that there was reasonable evidence to support this part of the plaintiff's claim.

The plaintiff was entitled to the bonus of $20; his recovery should be confined to that; and there should be no costs to either party of the action or appeal.

SECOND DIVISIONAL COURT. MAY 12TH, 1916.

RE CITY OF PETERBOROUGH AND PETERBOROUGH ELECTRIC LIGHT AND POWER CO.

Arbitration and Award—Compensation for Electric Works Expropriated by City Corporation—Claims Excluded by Statutes from Consideration of Arbitrators—Evidence—Appeal from Award—Right to Examine Arbitrators as Witnesses in Support of Appeal.

Appeal by the Corporation of the City of Peterborough from the order of BRITTON, J., 9 O.W.N. 119, dismissing an appeal from an award of arbitrators and refusing an application for the examination of the arbitrators as witnesses in support of the appeal.

The award was for the payment of $154,615 as compensation for the property of the company compulsorily taken by the city corporation.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

M. K. Cowan, K.C., and G. N. Gordon, for the appellants.

W. N. Tilley, K.C., for the company, respondents.

Strachan Johnston, K.C., for bondholders of the company.

LENNOX, J., after stating the facts, in a written opinion, said that the arbitrators had definitely stated that they had not taken into consideration any of the matters prohibited by the Ontario statutes (2 Geo. V. ch. 117, 3 & 4 Geo. V. ch. 114, and 4 Geo. V. ch. 87) affecting this case. There was a great deal in the evidence to make it quite possible to do so, but nothing in it or anywhere to shew that the arbitrators had acted upon a wrong principle. There was evidence upon which they could come to the conclusion they had reached, and they were men peculiarly fitted to deal with questions of the kind which arose upon the arbitration. It could not be said that they had erred. The appeal should be dismissed with costs.

MASTEN, J., read a judgment in which he reviewed the evidence and referred to several cases—among others to Hamilton Gas Co. Limited v. Hamilton Corporation, [1910] A.C. 300, 305; In re London County Council and London Street Tramways Co., [1894] 2 Q.B. 189; Edinburgh Street Tramways Co. v. Lord Provost, etc., of Edinburgh, [1894] A.C. 456; Stockton and Middlesbrough Water Board v. Kirkleatham Local Board, [1893] A.C. 444, 449. He said that a perusal and consideration of the evidence and exhibits had failed to satisfy him that there was any such clear or manifest error in the conclusion arrived at by the arbitrators as to justify an interference by this Court.

The application by the municipal corporation for leave to examine the arbitrators in support of the corporation's appeal was properly dismissed by Britton, J.—when the only matter pending before the Court is an appeal such as this, no right of examination exists: Duke of Buccleuch v. Metropolitan Board of Works (1872), L.R. 5 H.L. 418; Recher & Co. v. North British and Mercantile Insurance Co., [1915] 3 K.B. 277; Re Clarkson and Campbellford Lake Ontario and Western R.W. Co. (1916), 35 O.L.R. 345.

The appeal should be dismissed with costs.

RIDDELL, J., agreed in the result.

MEREDITH, C.J.C.P., read a dissenting judgment. He was of opinion, for reasons stated at length, that the appeal should be allowed and the award set aside; and, for reasons also given, that the compensation should be fixed at $100,000. The appellants should have the costs of the appeal, and there should be no order as to the costs of the arbitration.

Appeal dismissed; MEREDITH, C.J.C.P., *dissenting.*

SECOND DIVISIONAL COURT. MAY 12TH, 1916.

*HAMILTON GAS AND LIGHT CO. AND UNITED GAS AND FUEL CO. v. GEST.

Negligence—Construction by Contractor of Conduit in City Street—Break in Pipe of Gas Company—Duty of Contractor—Restoration of Pipe to Proper Condition—Failure to Perform—Change in Ownership of Pipe after Break—Continuing Duty to Restore—Right of both Owners to Recover—Damages—Search for Leak—Repair—Labour and Material—Loss by Escape of Gas—Period of Time—Price of Gas—Appeal Partly Successful—Costs.

Appeal by the defendant from the judgment of the Judge of the County Court of the County of Wentworth in favour of the plaintiffs in an action brought in that Court to recover damages for injury to the gas-pipes of the plaintiffs laid in the streets of the city of Hamilton, by the negligence of the defendant, a contractor for the construction of a conduit for the transmission of Hydro-Electric current. In the course of the defendant's work, it was alleged, he caused the plaintiffs' pipes to sag and leak. The judgment against the defendant was for $1,323.05 and costs.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

A. O'Heir, for the appellant.

S. F. Washington, K.C., for the plaintiffs, respondents.

MEREDITH, C.J.C.P., read a judgment in which he referred, first, to the argument of the appellant's counsel that the appellant was not liable for loss sustained after the sale of the property in question by the one company of plaintiffs to the other. The gas company and the Hydro-Electric Department, the Chief Justice said, had each a right to place and maintain pipes and conduits in the public street where the injury was done. The right to lay the pipes or conduits of the Department was subject to the duty to disturb the other pipes as little as reasonably could be, and to restore them, after disturbance, as nearly as possible to their former condition. Through some want of care, one of the pipes of the gas company was broken, and through that fracture a large quantity of gas escaped, both before and after the sale by the one company of all its property to the other; and damages had been awarded to each company for the loss thus caused. The

whole cause of action did not arise when the break occurred; the defendant's duty was to restore the pipes—a duty which, as long as it lasted, was a duty owed to the owner for the time being of the pipes and of the gas wasted by reason of the continued neglect of that duty.

But the plaintiffs could not, nor could either, recover for losses which the exercise of ordinary care, under all the circumstances of the case, on their part, would have prevented.

Reference to Jamal v. Moolla Dawood Sons & Co., [1916] A.C. 175; Erie County Natural Gas and Fuel Co. v. Carroll, [1911] A.C. 105; Wertheim v. Chicoutimi Pulp Co., [1911] A.C. 301; British Westinghouse Electric and Manufacturing Co. Limited v. Underground Electric Railway Co. of London Limited, [1912] A.C. 673; Williams Brothers v. Ed. T. Agius Limited, [1914] A.C. 510.

The County Court Judge allowed the whole month of December and one-third of the month of January as the time during which full compensation, at retail rates, should be allowed for the escape of the gas, calculated at the quantity the plaintiffs asserted; in addition to cost of search and repair. In that he was too liberal in at least two respects—time and price. The period of four weeks was ample in time, and 85 cents per thousand feet was enough in money, to allow in computing the plaintiffs' damages; and so computed, with the addition of $120 for labour and material, the plaintiffs' damages were $684.

The appeal should be allowed and the plaintiffs' damages reduced to $684; there should be no order as to the costs of the appeal.

RIDDELL, J., agreed with the Chief Justice.

LENNOX and MASTEN, JJ., also agreed in the result, each giving reasons in writing; but MASTEN, J., was of opinion that the defendant, the appellant, should have the costs of the appeal, in which he had substantially succeeded.

Appeal allowed without costs; MASTEN, J., *dissenting as to costs.*

HIGH COURT DIVISION.

FALCONBRIDGE, C.J.K.B. MAY 9TH, 1916.

BEST v. RENAUD.

Chattel Mortgage—Absence of Redemption Clause—Acceleration Clause—Discretion of Mortgagee—New Goods Brought on Premises—Seizure of Goods not Covered by Mortgage—Damages —Costs—Counterclaim.

Action for damages for trespass on the plaintiff's property and wrongful seizure of his goods and chattels. The defendant justified under a chattel mortgage, and counterclaimed for the amount due thereon.

The action was tried without a jury at Sandwich.

F. D. Davis, for the plaintiff.

W. A. Smith, for the defendant.

FALCONBRIDGE, C.J.K.B., read a judgment in which he said that there were two great lions in the plaintiff's path: (1) the absence of a redemption clause in the chattel mortgage; (2) the clause "or in case that the mortgagee feel unsafe or insecure or deem said goods and chattels in danger of being sold or removed, of which the mortgagee shall be sole judge," then the whole money shall become due, etc.

There are many cases in the Courts of the United States of America on the question whether a power like this should be exercised reasonably or in good faith. In some States (Wisconsin, e.g.), it is in the sole discretion of the mortgagee.

There was practically no dispute about the facts, except as to the oral evidence on both sides about the plaintiff having the right to sell goods out of the shop, which should be disregarded. It would appear that new goods brought into the shop, to replace those sold or used in the plaintiff's business, would not be subject to the chattel mortgage.

But the defendant seized and took away goods which he had admittedly not the right to take, and these he returned after writ issued. For this and any other matters, if any, in respect of which the defendant's proceedings were irregular, the plaintiff should be allowed $75 damages.

The plaintiff placed his damages at an altogether absurd figure —$75 a week for profits, or nearly $4,000 a year.

The plaintiff should be allowed $50 costs; the damages and costs should be credited on the defendant's mortgage.

Judgment for the defendant on his counterclaim for the amount due on the mortgage.

Certain sums are to be credited, and the defendant is to have judgment for the balance, without costs.

MIDDLETON, J. MAY 12TH, 1916.

*O'GRADY v. CITY OF TORONTO.

Mistake—Money Voluntarily Paid for Taxes under Mistake of Law—Right to Recover—Change in Law by University Act, 6 Edw. VII. ch. 55, sec. 18.

The plaintiff sued to recover taxes paid to the defendants, the city corporation, upon a house erected upon land owned by the University of Toronto and leased on the 15th May, 1878, for a term of 39 years, at an annual rental of $150—the tenant paying the taxes. The lease was assigned to the plaintiff in 1904.

After the making of this lease, the University Act of 1906, 6 Edw. VII. ch. 55, was passed; by sec. 18, the property of the University shall not be liable to taxation, but the interest of every lessee and occupant of its real property shall be liable to taxation.

Neither the plaintiff nor the defendants had knowledge of this change in the law, and the property continued to be assessed upon the basis of its actual value, and the plaintiff paid the taxes upon the assumption that he was liable to pay as before.

In 1914, the mistake was discovered, and the defendants refunded to the plaintiff the difference between the tax upon the fee and the tax upon the leasehold interest for 1914, but refused to make any further concession.

This action was brought to recover the taxes paid for the years 1907 to 1913; but it was conceded that the Limitations Act would prevent a recovery save for the years 1910 to 1913 inclusive.

The action was tried without a jury at Toronto.

W. H. Irving, for the plaintiff.

Irving S. Fairty, for the defendants.

MIDDLETON, J., said that he had come to the conclusion that the plaintiff must fail, for the payment was made voluntarily, the defendants assuming that there was the right to demand the taxes, and the plaintiff assuming that there was the obligation to pay; both parties being ignorant of the statutory amendment to the law. Equity has never yet gone so far as to afford relief by maintaining an action brought, directly or indirectly, to recover money paid under mistake of law.

The summary of the law found in Benjamin on Sale, 5th ed., pp. 113, 114, relates to the power of the Court to relieve from a contract made in ignorance of the law.

Reference to Pollock on Contracts, 5th ed., p. 437; article by Mr. Bigelow in 1 L.Q.R. 298; Cooper v. Phibbs (1867), L.R. 2 H.L. 149; Halsbury's Laws of England, vol. 21, para. 67; Batten Pooll v. Kennedy, [1907] 1 Ch. 256; Cushen v. City of Hamilton (1902), 4 O.L.R. 265.

Durrant v. Ecclesiastical Commissioners (1880), 6 Q.B.D. 234, is, as pointed out in Trusts Corporation of Ontario v. City of Toronto (1899), 30 O.R. 209, 213, a case of mistake in fact.

Action dismissed with costs.

SINCLAIR v. TORONTO BRICK CO. LIMITED — FALCONBRIDGE, C.J.K.B.—MAY 8.

Company—Contract—Authority of Manager—Agreement to Discharge Mortgage—Correspondence—Construction.]—Action to compel the defendants to carry out an alleged agreement to discharge a mortgage, and for an injunction restraining the defendants from taking or continuing proceedings to enforce the mortgage against the plaintiff's property, and for damages. The action was tried without a jury at Toronto. The learned Chief Justice, in a written opinion, set out the correspondence which, the plaintiff alleged, constituted the agreement, and said that it was perfectly manifest that the defendants never contemplated discharging their mortgage, as to the plaintiff's property, and allowing him to assume $500 only of the mortgage-moneys and pay when and as he pleased. If the letter of the 6th February, 1915, should be considered capable of any such construction, it was equally manifest that the defendants' manager had no authority to write such a letter, and that it did not bind the defendants, an incorporated company. There was no meeting of directors or other corporate act to authorise or sanction it; the president of the company gave no authority to write such a letter, nor did he know that such a letter was written; and the offer of Allan (unauthorised as it was in the sense assigned to it by the plaintiff) was not made in the ordinary course of the company's business. Action dismissed without costs. L. F. Heyd, K.C., for the plaintiff. M. H. Ludwig, K.C., for the defendants.

RE FRANCISCO AND CANADIAN ORDER OF CHOSEN FRIENDS—SUTHERLAND, J., IN CHAMBERS—MAY 13.

Insurance—Life Insurance—Motion by Insurance Society for Leave to Pay Moneys into Court—Necessity for—Insurance Act, R.S.O. 1914 *ch.* 183, *sec.* 176.]—Under a life insurance certificate issued by the society to one Almeda Francisco, $400 became payable by the society, she having died on the 18th February, 1916. The society, having doubts as to the person or persons entitled to payment, asked to be allowed to pay the money into Court. The Official Guardian contended that, in view of the consent of the adult beneficiary and executor, lodged with the society, there was no occasion for a motion—the money might be paid in under the Insurance Act, R.S.O. 1914 ch. 183, sec. 176. SUTHERLAND, J., considered, however, that that section was applicable only in a very plain case; and he made the order for payment in, fixing the costs of the society at $20. Lyman Lee, for the society. F. W. Harcourt, K.C., as Official Guardian, representing infants concerned.