The
Ontario Weekly Notes

VOL. XV. TORONTO, JANUARY 17, 1919. No. 19

APPELLATE DIVISION.

SECOND DIVISIONAL COURT. JANUARY 9TH, 1919.

*RE ALBIN AND CANADIAN PACIFIC R. W. CO.

Railway—Injury to Land (no Part of which is Taken) by Construction of Subway—Compensation—Allowance for Loss of Business—Railway Act, R.S.C. 1906 ch. 37, sec. 155—Allowance not Confined to Three Years' Loss.

Appeal by the railway company, contestants, from an award of an arbitrator determining the compensation to be paid to the claimant, Alberta Albin, for injury sustained by the construction by the contestants of a subway in Yonge street, in the City of Toronto.

The claimant's premises, in which she carried on the business of a confectioner, were situated on the west side of Yonge street, a short distance north of the railway tracks.

The arbitrator allowed $10,866, of which $4,500 was for loss of business. The balance represented the depreciation in the value of the property.

The railway company contended that the claimant should be allowed nothing for her loss of trade.

The appeal was heard by MULOCK, C.J. EX., CLUTE, RIDDELL, SUTHERLAND, and KELLY, JJ.

C. M. Colquhoun, for the appellants.

W. Laidlaw, K.C., for the claimant, respondent.

CLUTE, J., in a written judgment, said that, although no land of the claimant was taken, she was entitled to damages by reason of the railway company having cut away the street in front of her premises to the depth of more than 5 feet, thus destroying her approach to Yonge street.

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

It was not disputed that the claimant was entitled to compensation, although none of her lands were taken.

The Railway Act, R.S.C. 1906 ch. 37, does not limit the compensation to lands injuriously affected. The right to compensation is declared by sec. 155, which is different in its meaning and intendment from the sections of the Imperial Acts under which it has been decided that damage to be recoverable must result from an act made lawful by the statutory powers or be such as would have been recoverable in an action but for the statutory powers.

After an examination of the authorities, the learned Judge stated his opinion that the claimant was entitled to damages under sec. 155; that the evidence shewed that the damage by loss of trade arose directly from the execution of the works, and was in addition to the amount allowed as represented by the value of the property as it existed before and after the building of the subway. It was not argued that the amount allowed, if the claimant was entitled to any sum for loss of business, was too large.

In Re Hannah and Campbellford Lake Ontario and Western R.W.Co. (1915), 34 O.L.R. 615, it was held that the proper method is to ascertain the value of the whole parcel of which part has been taken and the value of the remaining portion after the taking and deduct the one from the other; the difference is the compensation to be allowed.

There is no case shewing the method to be adopted in such a case as the present. The rule laid down in the case just cited is not applicable. If that rule were strictly applied, it would exclude the loss which might and which in this case largely did occur during the progress of the work.

Proceedings were taken with a view to commencing the work on the subway as early as 1913, and the work actually began in May, 1914. The evidence shewed that the claimant's business was increasing until the work was begun in 1914, and then it began to go back. She continued the business up to 1918, when she sold the premises.

The evidence of the loss of business, upon the facts in this case, was properly admissible and very important as evidence upon which to base the claimant's loss.

The learned Judge said that he could find no authority except Re Meyer and City of Toronto (1914), 30 O.L.R. 426, which would justify the arbitrator in accepting the 3 years' loss of business as the measure of loss which should be added to the depreciation of the property.

The case should go back to the arbitrator with a direction to him to ascertain the entire compensation to which the claimant

was entitled, and, in so ascertaining it, to consider the evidence of loss of business and make such allowance therefor as forming part of the compensation to be allowed as he might think best in the circumstances.

The costs of this appeal and the costs of the reference back should be costs in the cause.

MULOCK, C.J. EX., and SUTHERLAND, J., agreed with CLUTE, J.

KELLY, J., agreed in the result, for reasons stated in writing.

RIDDELL, J., read a dissenting judgment. He was of opinion that nothing should have been awarded for loss of business.

Order directing a new ascertainment of compensation.

SECOND DIVISIONAL COURT. JANUARY 10TH, 1919.

*RAYMOND v. TOWNSHIP OF BOSANQUET.

Highway—Nonrepair—Accident to Motor-vehicle—Injury to Passenger—Approach to Narrow Bridge—Barricade upon Highway—Duty of Township Municipality under sec. 460 of Municipal Act, R.S.O. 1914 ch. 192—Needs of Traffic—Proximate Cause of Accident—Findings of Trial Judge—Reversal on Appeal.

Appeal by the defendants from the judgment of MEREDITH, C.J.C.P., 43 O.L.R. 434, 15 O.W.N. 6.

The appeal was heard by MULOCK, C.J.Ex., CLUTE, RIDDELL, and SUTHERLAND, JJ.

I. F. Hellmuth, K.C., and A. Weir, for the appellants.

J. M. McEvoy and E. W. M. Flock, for the plaintiff, respondent.

KELLY, J., read a judgment in which he set out the facts in detail and quoted portions of the evidence. The accident occurred on the 26th July, 1917. The plaintiff was a passenger in a motor-car driven by one Keene. Proceeding northward, the car approached the place where the accident occurred. On the west or left-hand side of the roadway, and within the limits of the road allowance, there was an open ditch or stream; the defendants had,

several years ago, diverted the roadway crossing over the ditch by means of a bridge to the westerly side of the ditch on to a roadway which was then laid out from the bridge northerly along this side upon land acquired for the purpose. On the roadway by which the car approached the bridge there was, at some distance to the south, a hill or incline sloping towards the north The foot of this incline was about 200 feet southerly from the bridge, the length of the incline itself being about 300 feet. After the traffic was diverted across the bridge, a fence or barricade was thrown across the part of the roadway which thereafter ceased to be used, on a line from about the north-easterly corner of the bridge easterly to the fence forming the easterly boundary of the road allowance. The line of the road and the barricade were observable by persons coming down the incline.

When the car reached the curve westerly on the bridge, the driver, according to his own evidence, commenced to make the turn on to the bridge; but, instead of following the driveway across the bridge, the car proceeded towards and ran into the guard railing along the north side of the bridge, carried away part of it and the post by which it was supported at the north-easterly corner, and went into the ditch. The driver said that, when he came to the curve from the roadway to the bridge, he thought that the turn was too sharp to permit of his car passing over the bridge in the usual way; and, fearing that it would be thrown sideways over the edge, he made a sudden turn to the right, and thus went into the ditch.

What was complained of was, that the bridge was so narrow and the turn from the gravelled road on to it so sharp as to constitute a danger to those travelling over it; and also that the highway was obstructed by piles or logs placed thereon by the defendants; and that maintaining the bridge and highway in that condition was a breach of the defendants' duty under sec. 460 of the Municipal Act.

The learned trial Judge had in effect found that there was no negligence on the part of the plaintiff and none by the driver of the car for which the plaintiff was responsible; and that maintaining the bridge and roadway in the condition described was a breach of the statutory duty. But the trial Judge had apparently overlooked inconsistencies in the evidence for the plaintiff. The evidence to the effect that there was no difficulty in making the turn and passing over the bridge was overwhelming.

After a careful analysis of the whole evidence, KELLY, J., was convinced that the predicament in which the plaintiff and his companions found themselves on the 26th July, 1915, must be attributed to some other cause than the narrowness of the bridge, the curve from the roadway leading on to it, or the presence of the

piles or logs on the roadway. The appeal should be allowed with costs and the action dismissed with costs.

MULOCK, C.J.Ex., and SUTHERLAND, J., agreed with KELLY, J.

RIDDELL, J., agreed in the result.

CLUTE, J., read a dissenting judgment. He was of opinion that the judgment of the trial Judge was in all respects right.

Appeal allowed (CLUTE, J., *dissenting*).

HIGH COURT DIVISION.

MIDDLETON, J., IN CHAMBERS. JANUARY 6TH, 1919.

ELECTRICAL DEVELOPMENT CO. OF ONTARIO LIMITED v. ATTORNEY-GENERAL FOR ONTARIO.

Constitutional Law—Action against Attorney-General for Declaration that Order in Council Ultra Vires—Order Setting aside Writ of Summons on Summary Application.

Appeal by the plaintiffs from an order of the Master in Chambers, made upon the application of the defendant, setting aside the writ of summons, on the ground that the plaintiffs had no right or authority to sue the Attorney-General without having first obtained a fiat.

The claim in the action was for a declaration that the Lieutenant-Governor and Executive Council had no power, under the Water Power Regulation Act or otherwise, to make a certain order, dated the 27th June, 1918, whereby the plaintiffs were directed to operate their works to their full capacity and to supply part of the electricity developed, at prices specified, to the Hydro-Electric Power Commission.

D. L. McCarthy, K.C., for the plaintiffs.
Edward Bayly, K.C., for the defendant.

MIDDLETON, J., in a written judgment, said that he could not find any way of distinguishing this case from the decision of the Appellate Division in Electric Development Co. of Ontario Limited v. Attorney-General for Ontario and Hydro-Electric Power Com-

mission of Ontario (1917), 38 O.L.R. 383; and he should not attempt to review that decision.

If the plaintiffs so desired, the learned Judge was willing to withhold his decision until after the appeal to the Privy Council in the case cited had been heard. If he should not be notified of this desire in a week, the appeal would be dismissed with costs.

Reference to Hosier Brothers v. Earl of Derby, [1918] 2 K.B. 671.

MIDDLETON, J. JANUARY 7TH, 1919.

*FAULKNER v. FAULKNER.

Will—Testamentary Incapacity—Testator Incapable at Time of Instructions of Remembering Relations with Claims upon his Bounty—Inertia—Will Executed three Days after Instructions and one Day before Death—Destruction of Mentality by Disease—Revocation of Probate.

Action by George Faulkner to set aside probate of the will of Hugh Faulkner, deceased, and to have it declared that the alleged will was not operative by reason of lack of testamentary capacity.

The plaintiff and defendant were the two brothers and next of kin of the deceased, who was unmarried, and had no other relations who would be entitled to share upon an intestacy.

By the will the testator gave his brother George, the plaintiff, $1, and all the rest of his property absolutely to his brother Archibald, the defendant, whom he appointed executor.

The action was tried without a jury in Toronto.

W. N. Tilley, K.C., and H. E. Irwin, K.C., for the plaintiff.

H. H. Dewart, K.C., for the defendant.

MIDDLETON, J., in a written judgment, said that on the 29th January, 1918, which was a Tuesday, the testator was admitted to a hospital, and on the same day the will was drawn, but was not executed, because, owing to his physical condition, he was unable to sign it. On the following Friday the will was signed, and on Saturday he died.

Dr. Silverthorn, a witness at the trial, explained the situation in a way which commended itself to the learned Judge. The testator could think if compelled to. If left alone, his mind ceased to work. He could have made a valid will if care had been taken to present to his mind for consideration the claims of those relations

who would have been the natural objects of his bounty; but, unless he was aided by having those claims brought to his attention, he had not that capacity which, since the decision in Banks v. Goodfellow (1870), L.R. 5 Q.B. 549, has always been regarded as necessary. See Murphy v. Lamphier (1914), 31 O.L.R. 287, at p. 317 et seq.

The testator's mind was so enfeebled by disease that he could entertain only one idea at a time. He had a fixed and well-rooted antipathy to his brother George, and his strongest testamentary desire was to exclude George from sharing in the estate.

There was a conflict as to what took place after the wish to exclude George had been expressed. The solicitor who received instructions from the testator and drew the will, asked the testator how he wished to dispose of his estate; and, according to the solicitor's evidence, the testator said, "I want to give it to Archie" (the defendant) "and I want Archie's family to benefit." The solicitor asked about Archie's family, and the testator seemed disconcerted. The solicitor asked, "How do you wish your brother and his family to share?" After a little time the testator said, "Well, give it to Archie." The solicitor said, "Will you trust Archie to deal fairly with his family?" The testator said, "Yes." The defendant's account differed from this; but, according to either version, no other possible beneficiary was mentioned or considered.

In the learned Judge's opinion, the change from an intention to benefit Archie's family to an absolute gift to Archie alone was the result of mental inertia and weakness.

By a will drawn at an earlier period, neither George nor Archie took any benefit. Archie's children received the greater portion, but female relations received substantial shares and provisions. Had the testator been so roused that he could have thought of these relations, or had his attention been drawn to them, the result might have been different.

The question was not whether the testator knew that he was giving all to Archie and excluding all other relations, but whether he was capable at the time of recollecting who these relations were, of understanding their claims upon his bounty, and of deliberately forming an intelligent purpose of excluding them.

The testator, the learned Judge was satisfied, thought of no one save George, Archie, and Archie's children. The latter were intended to be objects of his bounty, and were excluded not by any conscious act of the testator, but because the question put to him, as to how division was to be made between Archie and his children, was one calling for greater effort than he was able to make.

The result of declaring the will void is that the two brothers

divide the estate, and the one adequately expressed intention, that George should take nothing, is defeated. The Court, however, is not concerned with the result of the operation of law, where want of capacity is found.

The will was not signed when it was drawn, but 3 days later, when the disease had increased and death was near. A pen was put in the man's hand, and a mark made.

A will may be executed by one who has very little consciousness left if it is shewn that it was prepared in accordance with his wishes; but here things had gone too far to justify the Court in upholding what took place. The stupor had destroyed all mentality.

There should be judgment setting aside the probate and declaring the alleged will void from lack of testamentary capacity.

All costs out of the estate.

MEREDITH, C.J.C.P. JANUARY 8TH, 1919.

C. v. C.

Husband and Wife—Alimony—Reference to Fix Permanent Alimony —Scope of Inquiry as to Income and Property of Defendant.

An appeal by the defendant from a certificate of the Master in Ordinary of a ruling in the course of a reference to fix permanent alimony.

The appeal was heard in the Weekly Court, Toronto.

R. T. Harding, for the defendant.

Peter White, K.C., for the plaintiff.

MEREDITH, C.J.C.P., said that the purpose of the reference was to ascertain what was a reasonable sum for the separate maintenance of the plaintiff in the position which, as the defendant's wife living with him, she would occupy. It was not to ascertain minutely what property the defendant was possessed of, nor even his exact income, though his income and means in very many cases became the measure of the sum to be ascertained—as, for instance, when that which might seem to be a reasonable sum was objected to by the defendant on the ground of his inability to pay—and were generally material circumstances to be taken into consideration: see Sykes v. Sykes, [1897] P. 306; Kettlewell v. Kettlewell, [1898] P. 138; and Leslie v. Leslie, [1908] P. 99.

And care should always be taken to prevent prying into the affairs of others, and indeed those of the defendant, unnecessarily: see Tonge v. Tonge, [1892] P. 51.

From the manner in which the reference had been conducted hitherto, as well as the manner in which this appeal had been argued, counsel seemed to be agreed that this was a case in which it was proper, if not necessary, that reasonable inquiry should be made respecting the defendant's income and property; but counsel for the defendant complained that the Master was making inquiry with a view to determining what sum a company with which the defendant was closely connected should allow him for travelling expenses in connection with the company's business. That the Master could have no right to do; the company might in good faith pay such sum as they deemed proper; but, if the defendant denied his ability to pay that amount which, if he had ability, would be a reasonable sum, the Master might consider whether the defendant's ability might not be increased by reasonable savings out of his travelling expenses, the company not objecting, and also ascertain whether he was not actually doing so: see McCulloch v. McCulloch (1863), 10 Gr. 320.

It would be well for all concerned to peruse the cases.

The Master, with their assistance, should be guided by the views now expressed, and, to prevent misunderstanding, put in writing: it should not be necessary that any formal order be made except that the costs of this appeal should be treated as if costs of the reference.

MIDDLETON, J. JANUARY 8TH, 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 plaintiffs from the report of an Official Referee, to whom the action was referred for trial, holding that the plaintiffs were not entitled to recover anything for rental or by way of use and occupation of the lands in question from the 1st February, 1913, when the term granted by the original lease expired, and the 7th May, 1917, when the plaintiffs recovered possession under a judgment of this Court.

The motion was heard in the Weekly Court, Toronto.
H. D. Gamble, K.C., for the plaintiffs.
William Laidlaw, K.C., for the defendant.

MIDDLETON, J., in a written judgment, said that the lands in question were demised for 21 years from the 1st February, 1892, by a lease of the 16th October, 1893. The title of the lessee became vested in the defendant.

The lease contained covenants entitling the lessee to a new and further lease for a further term of 21 years, at a rental to be fixed by the award of three arbitrators, to be made before the expiration of the term.

Arbitrators were duly appointed, but an award was not made within the time limited, as proceedings against the Corporation of the City of Toronto for damages caused to the lands by the high level bridge across the Don were pending, and it was agreed by a formal document that the arbitration should stand till these proceedings should be ended, and the rights of the parties should not be prejudiced by this delay.

When the award was made, on the 30th December, 1916, the rental was increased from $200 per annum to $1,400 per annum; the tenant in each case paying the taxes.

The defendant thought this award excessive and refused to pay. Hence this action.

In the meantime the property had been in possession of sub-tenants, and a statement had now been put in shewing that the defendant had received $2,248 rental, and his mortgagee, the Toronto General Trusts Corporation, had collected $1,601.16, a total of $3,849.16, and taxes had been allowed to fall into arrear to the amount of $2,658.51.

The Referee had dismissed with costs the claim of the plaintiffs, holding that they had no claim of any kind against the defendant, and that the defendant might retain for his own use all that he had received.

Counsel for the defendant did not admit the accuracy of these figures, and desired time to look into them; and time should readily be granted if the figures could be regarded as material.

There being an agreement for a lease, at a rental to be fixed by arbitration, as soon as the rental was fixed the defendant became liable to pay the fixed rental, and ceased to be liable only when the lease was forfeited: Walsh v. Lonsdale (1882), 21 Ch. D. 9.

Counsel for the plaintiffs recognised the fact that the rental was fixed for the whole 21 years, probably in the view that the property might increase in value during the term, and assented to any abatement from the plaintiffs' strict right which the Court might regard as fair.

Having regard to this, the learned Judge allowed the appeal and directed that the plaintiffs should have judgment for $5,000, a sum considerably less than the rental and unpaid taxes; this sum to be taken to cover the costs of the action and appeal.

CLUTE, J., IN CHAMBERS. JANUARY 9TH, 1919.

*COPELAND v. MERTON

Mortgage—Order of Local Judge under Mortgagors and Purchasers Relief Act, 1915, Authorising Commencement of Action to Enforce Mortgage—Absence of Notice to Defendant Liable on Covenant—Service of Notice Dispensed with—Improper Order—Power of Judge in Chambers to Rescind—Secs. 2 (2) and 5 (2) of Act—Rules 217 and 505 (1)—Action Commenced pursuant to Order—Writ of Summons Set aside.

Motion by the defendant Merton to rescind an order of the Local Judge at Cobourg, dated the 27th December, 1918, permitting the plaintiff to commence an action to enforce a mortgage, and to dismiss the action commenced by the plaintiff on the 27th December, 1918.

H. R. Moses, for the defendant Merton.
D. B. Simpson, K.C., for the plaintiff.

CLUTE, J., in a written judgment, said that the defendant Merton, the original mortgagor, was liable on his covenant. After some correspondence, Merton's solicitor wrote to the plaintiff's solicitor on the 10th December, 1918, asking him to prepare an assignment of the mortgage to Merton and submit it for approval. The plaintiff's solicitor prepared the assignment and sent it to Merton's solicitor on the 14th December, with a letter stating the amount due, including interest. This letter was received by Merton's solicitor on the 17th December, and he delayed answering it until his client should receive the proceeds of sale of some securities which he had realised in order to provide money to pay off the mortgage. On the 23rd December, the plaintiff's solicitor, not having heard from Merton's solicitor, obtained leave from the Local Judge to make a motion on the 27th December for an order for leave to commence an action upon the mortgage, which was made in 1913. Notice of this motion was sent with a registered letter to Merton's solicitor, who received it on

the 26th December. On the 27th December, the defendant Merton not being represented, the Local Judge made an order permitting the plaintiff to commence an action to enforce the mortgage by foreclosure and for payment by the defendant Merton pursuant to his covenant and for possession. The order further provided that service of notice of motion upon the defendant Merton be dispensed with.

Merton was not served with the notice, and his solicitor was not authorised to accept nor did he accept service of it.

By the Mortgagors and Purchasers Relief Act, 5 Geo. V. ch. 22, sec. 2 (2) (*a*), an application for leave to bring an action may be made to a Local Judge in Chambers or to a Judge of the Supreme Court in Chambers.

It was not disputed that an order was necessary.

Section 5 (2) provides that a Judge may give directions as to the service of notice upon any person whom he deems a proper party to the proceedings, or he may dispense with service upon "any party who appears to have abandoned his interest in the property."

Here there was no question of abandonment, and the defendant Merton was entitled to notice.

By sec. 2 (2), the application is to be upon originating notice in accordance with the practice of the Supreme Court.

Rule 505 (1) gives an appeal from an order of a Local Judge to a Judge in Chambers. That Rule applied to the present case; it was a question of practice; the defendant Merton had not been served; the order was made ex parte.

Rule 217 provides for a motion to rescind in a case of this kind.

Re George and Lang (1916), 36 O.L.R. 382, 30 D.L.R. 504, distinguished.

The Local Judge was not authorised to dispense with the service of the notice upon the defendant Merton, who was to be sued upon his covenant.

The order should be rescinded and the writ of summons issued pursuant to the order should be set aside. The plaintiff should pay the defendant Merton's costs of this motion.

ALLEN v. MACFARLANE—SUTHERLAND, J.—JAN. 7.

Contract—Sale of Business and Chattels—Bill of Sale—Action for Balance of Purchase-price—Alleged Option to Transfer Land instead of Paying in Money—Covenant of Vendors not to Engage in Similar Business—Failure to Prove Breach—Counterclaim—Reformation of Contract.]—Action to recover $1,100, the amount or balance due upon a sale of the goods and chattels of a business

carried on by the plaintiffs and the lease of the business premises. The action was tried without a jury at a sittings in Ottawa. SUTHERLAND, J., in a written judgment, said, after setting out the facts, that the agreement for sale was in the form of a bill of sale, which was a complete contract in itself and under which the defendant was required to pay to the plaintiffs the balance sued for in this action. The agreement did not give the defendant an option to transfer a certain quarter-section of land within 3 months in lieu of the payment of the balance. Even if it had given the defendant that option, he did not make the transfer within the 3 months. The agreement did provide that the balance should be secured by a transfer of the land within 3 months. A document, bearing even date with the bill of sale, and signed by the defendant, was not signed by the plaintiffs or either of them, and appeared to have remained in the possession of the defendant or of one Palmer, his agent, as also a copy of the bill of sale. The plaintiffs were entitled to succeed unless it was shewn by satisfactory evidence that they had committed a breach of their covenant not to engage in a similar business, as alleged by the defendant. The evidence offered by the defendant on this branch of his defence was too meagre and unsatisfactory to warrant a finding that there had been any breach of the plaintiff's covenant in this respect. There should be judgment for the plaintiffs for $1,100 and costs. The defendant's counterclaim for reformation of the bill of sale and damages for breach of the covenant should be dismissed with costs. F. H. Honeywell, for the plaintiffs. A. E. Fripp, K.C., for the defendant.

KATZMAN v. HALL—FALCONBRIDGE, C.J.K.B.—JAN. 11.

Negligence—Collision of Motor-vehicles on Highway—Evidence—Fault Attributed to Defendant—Excessive Speed—Driving on Wrong Side of Road—Failure to Take Precautions to Avoid Collision—Absence of Contributory Negligence—Findings of Trial Judge—Damages.]—Action for damages for injury sustained by the plaintiff in a collision between his motor-cycle and the motor-car of the defendant upon a highway. The plaintiff alleged that the collision was brought about by the negligence of the defendant. The action was tried without a jury at St. Catharines. The learned Chief Justice, in a written judgment, said that the preponderance of independent testimony was much in favour of the plaintiff. The defendant's wife, who was the driver of the motor-car, had not a very great amount of experience; she was on the wrong side of the road at the time of the accident; and, if she had

been exercising ordinary care and paying attention to her duties, she should have seen the plaintiff in time to avert the collision. She could and should have stayed behind the Ford car (which she was perhaps racing with) until she knew that the coast was clear. The collision was due to her negligence, in that she was driving on the wrong side of the highway at an excessive rate of speed and did not make proper efforts or take precautions to avoid a collision with the plaintiff. The plaintiff was not guilty of negligence either causing the accident or so contributing to it that but for his negligence the accident would not have happened. The plaintiff suffered most grievous injuries. His actual out-of-pocket expenses amounted to $750. Judgment should be entered for the plaintiff for $2,750 and costs. A. Courtney Kingstone and F. E. Hetherington, for the plaintiff. George Wilkie, for the defendant.

RE MORRISON—BRITTON, J., IN CHAMBERS—JAN. 11.

Lunatic—Application for Order Declaring Incompetency—Necessity for Notice to Supposed Incompetent—Proper Material upon Application.]—Application by M. J. Morrison for an order declaring John Morrison incompetent to manage his affairs and for the appointment of a committee. BRITTON, J., in a written judgment, said that an application to have a man declared a lunatic or incompetent to manage his business should at least be upon notice to the supposed incompetent of intention to make the application. Service of this notice should be proved. There should be affidavits or evidence of medical men in regard to their opinion of the state of mind of the person supposed to be a lunatic. The material in this case was not sufficient to warrant the making of any such order as applied for. Motion dismissed without costs. A. C. Heighington, for the applicant.