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APPELLATE DIVISION.

MAY 31ST, 1915.

WINGROVE v. WINGROVE.

Contract—Agreement between Father and Son that Farm shall be Son's at Death of Father—Failure to Establish—Evidence — Corroboration — Statute of Frauds — Possession — Ejectment—Mesne Profits.

Appeal by the defendant from the judgment of MIDDLETON, J., ante 21.

The appeal was heard by FALCONBRIDGE, C.J.K.B., HODGINS, J.A., RIDDELL and LATCHFORD, JJ.

W. Laidlaw, K.C., for the appellant.

W. E. Buckingham, for the plaintiffs, respondents.

THE COURT dismissed the appeal with costs.

JUNE 1ST, 1915.

*ORR v. ROBERTSON.

Mechanics' Liens — "Owner" — "Request" to Contractor to Build—Mechanics and Wage Earners Lien Act, R.S.O. 1914 ch. 140, sec. 2(c)—Personal Liability—Evidence.

Appeals by the defendants Tyrrell and Hyland from the judgment of Mr. R. S. Neville, K.C., Official Referee, in a proceeding to enforce a mechanics' lien.

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

The appeals were heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

Shirley Denison, K.C., and A. W. Holmested, for the appellant Tyrrell.

Gideon Grant, for the appellant Hyland.

G. L. Smith, for the plaintiff, respondent.

RIDDELL, J., delivering the judgment of the Court, said that the Court at the argument decided against the contention of Tyrrell in respect of his personal liability, but reserved the question as to the lien upon his interest.

In 1913, the Rowland estate leased the land to Tyrrell for a term of years; in the same year, Tyrrell sublet to Hyland, with an agreement that Hyland should build according to plans to be approved by Tyrrell. Hyland entered into a contract with the plaintiff to build accordingly. The opinion of the Court was that, even if Tyrrell took no further part, this was a "request" under sec. 2(c) of the Mechanics and Wage Earners Lien Act, R.S.O. 1914 ch. 140. To render the interest of an "owner" liable, the work or service must be done, or the materials placed or furnished, at his request, express or implied; but there is no need that this request be made or expressed to the contractor—if the owner request another to build, and that other proceeds to build, by himself or by an independent contractor, the building being in pursuance of the request, the statute is satisfied.

Tyrrell's appeal was, therefore, dismissed with costs.

The personal liability of the appellant Hyland was alone in question upon his appeal; and the Court held that there was sufficient evidence to justify the Referee in deciding that Hyland personally gave the order for the work.

Hyland's appeal was, therefore, dismissed with costs.

JUNE 1ST, 1915.

*BALFOUR v. BELL TELEPHONE CO. OF CANADA.

Master and Servant—Liability of Master for Negligence of Servant—Driver of Hired Vehicle—Servant of Owner or Hirer—Evidence.

Appeal by the defendants from the judgment of the Senior Judge of the County Court of the County of Wentworth in favour of the plaintiff in an action for damages for injury done

to the plaintiff's motor car by a horse and waggon owned by one Temple, a liveryman, hired by the defendants, and driven by a man named Spera, a servant of Temple. Temple was brought in by the defendants as a third party.

The trial Judge found that the horse was being recklessly driven by Spera at the time the waggon ran into the plaintiff's car, and this was not disputed by the defendants; but they appealed from the finding that they were responsible for the recklessness or negligence of Spera.

The appeal was heard by RIDDELL, LATCHFORD, KELLY, and LENNOX, JJ.

H. A. Burbidge, for the appellants.

C. W. Bell, for the plaintiff, respondent.

The third party was not represented.

THE COURT held that, in driving the horse as Spera was driving it at the time of the accident, he was the servant not of the defendants, but of Temple. This was largely based upon Temple's own evidence: he said that the defendants had nothing to do with the actual driving of the horse, though Spera was helping in the work of the defendants and was under the orders, to some extent, of a foreman of the defendants. This, however, did not extend, as Temple said, to the actual driving.

Written opinions were given by LATCHFORD and KELLY, J., in which they referred to Consolidated Plate Glass Co. of Canada v. Caston (1899), 29 S.C.R. 624; Jones v. Scullard, [1898] 2 Q.B. 565; Donovan v. Laing Wharton and Down Construction Syndicate Limited, [1893] 1 Q.B. 629; Standard Oil Co. v. Anderson (1909), 212 U.S. 215; and Driscoll v. Towle (1902), 181 Mass. 416.

Appeal allowed with costs and action dismissed with costs; but the defendants not to have costs occasioned by bringing in the third party.

JUNE 2ND, 1915.

*DAVIS ACETYLENE GAS CO. v. MORRISON.

Practice—County Courts—Action for Money Demand—Writ of Summons — Special Endorsement — Affidavit Filed with Appearance—Election of Plaintiff to Treat Endorsement and Affidavit as Record—Ex Parte Order of Junior Judge Allowing Defendant to Deliver Statement of Defence — Delivery of Statement of Defence and Counterclaim — Order of Senior Judge Setting aside—Determination that Pleadings Unnecessary—Right to Deliver Counterclaim—Rules 56, 112—Right of Appeal—County Courts Act—Final Order.

Appeal by the defendant from the order of the Senior Judge of the County Court of the County of Lambton setting aside a statement of defence and counterclaim delivered by the defendant in an action brought in that Court.

The action was begun by a specially endorsed writ of summons issued on the 10th March, 1915. On the 22nd March, the defendant entered an appearance, with a sufficient affidavit of merits under Rule 56. The plaintiffs elected, under Rule 56 (2), to treat the endorsed claim and the affidavit as the record; on the 27th March, they applied to the Senior Judge to appoint a day for trial; the Senior Judge named the 21st April, and the plaintiffs served notice of trial under Rule 56 (2). On the 30th March, the defendant applied ex parte to the Junior Judge and obtained an order for leave to deliver a statement of defence: Rule 56 (5); he then delivered the statement of defence and counterclaim which were set aside by the order of the Senior Judge now in appeal.

The appeal was heard by FALCONBRIDGE, C.J.K.B., HODGINS, J.A., RIDDELL and LATCHFORD, JJ.

D. Inglis Grant, for the appellant.

Featherston Aylesworth, for the plaintiffs, respondents.

RIDDELL, J., read a judgment in which he said that, in his opinion, Rule 56 contemplated that the defendant should set out in his affidavit all the facts and circumstances constituting his defence; but if, by mistake, inadvertence, or even intention,

an omission were made, the defendant would not in every case be precluded from setting up the omitted facts as a defence.

Rule 56 (5) allows a statement of defence only which sets up a "further or other answer to the plaintiff's claim." The claim here was for the balance due upon a written order for a Davis generator. The defence was based upon misrepresentation. Upon comparing the statements in the affidavit with what was set up in the statement of defence delivered by the defendant, no ground appeared for reversing the finding of the Senior Judge that the affidavit was sufficient to enable the defendant to prove at the trial all that he alleged in the statement of defence.

But the defendant had delivered a counterclaim also. Rule 56 (5) does not give power in so many words to grant leave to file a counterclaim; and, in view of the language of Rule 112, "statement of defence" in Rule 56 (5) does not include a counterclaim. The case of a defendant to an action commenced by a specially endorsed writ desiring to counterclaim where the plaintiff elects under Rule 56 (2) seems to be a casus omissus; and in such a case no power is given to allow a counterclaim to be pleaded.

A question as to the right of appeal was raised, but was answered by Smith v. Traders Bank (1905), 11 O.L.R. 24, approved in M. Brennen & Sons Manufacturing Co. Limited v. Thompson (1915), ante 206.

The opinion was also expressed that the Junior Judge was not precluded from making the order upon any ground such as that the Senior Judge should have been applied to because he was seised of the case—there was no difference between the powers of the two Judges in that regard.

FALCONBRIDGE, C.J.K.B., and LATCHFORD, J., concurred.

HODGINS, J.A., concurred in the dismissal of the appeal, on the ground that the order of the Junior Judge, having been made ex parte, could not be supported, and was properly set aside: Joss v. Fairgrieve (1914), 32 O.L.R. 117.

The learned Judge doubted whether the defendant was debarred by the language of Rule 56 from obtaining leave to deliver a counterclaim.

Appeal dismissed with costs.

HIGH COURT DIVISION.

MIDDLETON, J., IN CHAMBERS. JUNE 1ST, 1915.

TRUSTS AND GUARANTEE CO. v. BOAL.

Discovery—Examination of Defendant Resident out of Ontario —Place of Examination—Rules 328, 331.

Appeal by the plaintiffs from an order of the Master in Chambers refusing to allow the plaintiffs to examine the defendant for discovery in Ontario, the defendant living in the State of New York, but allowing the plaintiffs to examine him at his place of abode.

M. J. Folinsbee, for the plaintiffs.
J. C. McRuer, for the defendant.

MIDDLETON, J., said that Rule 328 was in terms wide enough to empower an order directing a party out of the jurisdiction to attend within the jurisdiction for examination. Service would be made in Ontario, and the penalty for failure to obey would be dismissal of the action in case the plaintiff made default, and striking out the defence if the default was a defendant's; so that there would not of necessity be any extra-territorial action. Had the matter been res integra, such might well have been the decision; but, on Rules that could not be distinguished, it had been held that a narrower construction must prevail. In Meldrum v. Laidlaw (1902), not reported, it was so decided; and in Lefurgey v. Great West Land Co. (1906), 11 O.L.R. 617, the present Chief Justice of Ontario accepted this as correctly interpreting the Rule.

Rule 331, while indicating the remedy pointed out as appropriate, also indicated that there was a liability for contempt; but that did not assist; the non-attendance is contempt, apart from the question whether the place named is within or without the Province.

The Master had rightly interpreted the decisions; and the appeal failed; but, in all the circumstances, the costs of the appeal should be costs in the cause.

SUTHERLAND, J. JUNE 4TH, 1915.

M. SLOWMAN & CO. LIMITED v. ALBERT J. BRENTON CO. LIMITED.

Sale of Goods—Contract—Place of Payment—Breach in Ontario — Jurisdiction of Ontario Court — Right to Reject Goods—Inspection—Delivery to Carrier—Statute of Frauds —Leave to Set up by Amendment—Memorandum in Writing—Correspondence—Acceptance before Repudiation.

The plaintiffs, a company doing business in the city of Toronto, Ontario, sought to recover from the defendants, whose place of business was in Winnipeg, Manitoba, the sum of $1,536 and interest, being, as the plaintiffs alleged, the amount owing for 128 dressed Persian skins sold and delivered by the plaintiffs, on the 9th September, 1913, at the plaintiffs' warehouse in Toronto, to Albert J. Brenton, the president of the defendants.

The defendants assumed to reject the goods upon inspection when they arrived at Winnipeg.

The action was tried without a jury at Toronto.

A. C. McMaster, for the plaintiffs.

W. Proudfoot, K.C., for the defendants.

SUTHERLAND, J., said that the first point of importance was, whether or not the sale was upon the condition that if, on arrival at Winnipeg, the furs were not of the stipulated kind, the defendants had the right to reject them. That was a question of fact, and, weighing the testimony of the witnesses on both sides, and having regard to their demeanour and the probabilities, he found that issue in favour of the plaintiffs.

The learned Judge also finds that there was a delivery of the goods at Toronto and an acceptance the moment the goods were placed in the care of a carrier to be taken to Winnipeg.

The question of jurisdiction, which was raised by the entry of a conditional appearance, he also finds in favour of the plaintiffs—saying that payment should have been made at Toronto, and the breach of the contract was thus in Ontario.

The defendants applied at the trial for leave to amend their defence by setting up the Statute of Frauds; and that application was granted, the following cases being referred to as authority: Williams v. Leonard (1895), 16 P.R. 544; Steward v.

North Metropolitan Tramways Co. (1886), 16 Q.B.D. 556; Brunning v. Odhams Brothers (1896), 13 Times L.R. 65; Patterson v. Central Canada Savings and Loan Co. (1897), 17 P.R. 470; Canadian Lake Transportation Co. v. Browne (1913), 5 O.W.N. 376, 378.

Dealing then with the defence of the Statute of Frauds, the learned Judge expressed the opinion that the correspondence between the parties contained a statement of all the terms of the contract requisite to constitute a memorandum within the statute: Fry on Specific Performance, 5th ed. (1911), pp. 279, 280; Martin v. Haubner (1896), 26 S.C.R. 142. And there was also an acceptance of the goods and receipt of the same by the defendants in their warehouse at Winnipeg, sufficient to take the case out of the operation of the statute, notwithstanding that later there was a repudiation of part or all of the goods: Kibble v. Gough (1878), 38 L.T.R. 204; Page v. Morgan (1885), 15 Q.B.D. 228.

Judgment for the plaintiffs for $1,536, with interest from the 25th March, 1914, and costs.

WADE v. CRANE—MIDDLETON, J.—JUNE 1.

Contract—Sale of Brickyard—Default in Payment—Repossession by Vendor—Conversion of Bricks—Right to Possession of Plant Replacing Plant Sold—Construction of Contract—Purchaser-company—Winding-up Order—Rights of Liquidator—Set-off—Mortgage Debentures—Costs.]—Action by the liquidator of the Excelsior Brick Company Limited (in voluntary liquidation) to recover damages for the conversion by the defendant of bricks and machines. The defendant contracted to sell his brickyard to one Vane, who transferred the contract, with the defendant's assent, to the company. The company made default under the contract; and on the 20th March, 1914, the defendant took possession of the brickyard and everything that was there. The winding-up order was made on the 24th April, 1914. Among the things which the defendant took possession of were a large quantity of finished bricks, bricks in course of manufacture, and machines brought upon the premises by the company; the plaintiff's claim for conversion was in respect of these. By the terms of the contract, possession was to be given, but the property was not to pass until the full price was paid;

upon default the defendant was to be entitled to resume possession and to forfeit all money paid; and the company agreed to operate the plant so as not to impair its value or that of the land connected therewith. The defendant alleged a breach of this last provision, and counterclaimed the value of timber cut down, machinery removed or destroyed, and damages arising from improper changes in the physical condition of the plant. The action was tried without a jury at Hamilton. Held, that the clause of the contract upon which the defendant based his counterclaim did not contemplate that each individual part of the plant was to be kept in precisely the same condition as it was at the time of the purchase, but that the company's obligation was so to operate the plant that its value as a whole should not be reduced. The plant, as a whole, when the defendant repossessed it, was of greater value than the plant he sold; but this did not entitle the liquidator to recover upon that head. The new machines formed part of the plant, and the defendant was entitled to take them, whether they were technically fixtures or not. Trees were cut down, but the timber from them was beneficially used upon the premises. With reference to the bricks manufactured and in course of manufacture, the defendant was guilty of conversion, and the conversion took place after date of the winding-up. The value of the bricks taken was $6,000. It was said that 300,000 bricks had been sold to one Zimmerman. If the goods had been sold, there had been no separation from the bulk, and nothing done by which the property would pass; but the defendant should not be placed in peril of another action; and, unless the consent of Zimmerman and his pledgee (a bank) was filed, $3,000, to represent these bricks, should be paid into Court, subject to further order. The plaintiff should also be allowed against the defendant $300 for coal and oil taken. The defendant would be entitled to $146.05, the amount of an account rendered, and $300 for improper removal of fences; but these were liabilities of the company, and the defendant should have nothing more than a declaration of his right to rank in the liquidation in respect of these sums. The defendant was entitled to retain $24,000 of mortgage debentures which he took as part of his purchase-price. If he desired, he might have a declaration of his right to rank pari passu with the other holders of debentures upon the assets covered by them, for this sum, with accrued interest. No set-off allowed of the sum to which the defendant was en-

titled against the damages assessed for the bricks he took. All claims of either party not specifically mentioned to be taken as determined against the claims. The plaintiff to have costs against the defendant. A. C. McMaster and J. H. Fraser, for the plaintiff. C. A. Masten, K.C., and W. M. McClemont, for the defendant.

RE GODSON AND CASSELMAN—KELLY, J.—JUNE 1.

Vendor and Purchaser—Agreement for Sale of Land—Title—Application under Vendors and Purchasers Act—Parties.]—Motion by the vendor, under the Vendors and Purchasers Act, for an order declaring that the vendor could make a good title to land, the subject of an agreement for sale, under a conveyance from a devisee, notwithstanding a restraint upon alienation. The motion came originally before MEREDITH, C.J.C.P., who (5 O.W.N. 814) gave leave to renew it when all such persons as might take the land in the event of the restraint being held operative had been added as parties. The motion was renewed and came before KELLY, J., in the Weekly Court at Toronto. KELLY, J., said that the material now filed shewed that a large number of persons not made parties were in the class of those to whom notice was directed to be given. It was admitted by counsel for the vendor that the whereabouts of some of these necessary parties could not now be ascertained, and that it was not possible to have them served in the usual way with the necessary notice of proceedings. The application should be dismissed with costs, but without prejudice to any new application or proceedings the applicant might be advised to make or institute wherein the necessary persons could be made parties. C. W. Plaxton, for the vendor. J. H. Campbell, for the purchaser.

RE PORT ARTHUR WAGGON CO. LIMITED (PRICE'S CASE)—SUTHERLAND, J.—JUNE 2.

Company—Winding-up—Contributory—Shareholder—Prospectus—Application for Shares—Allotment—Notice.]—Appeal by Philip I. Price from an order of the Master in Ordinary, in the course of a reference for the winding-up of the company under the Winding-up Act, R.S.C. 1906 ch. 144, confirming the placing of the appellant's name on the list of contributories in respect of 10 preference shares of the capital stock of the company. The appellant signed an application for 10 shares of preferred stock, dated the 3rd November, 1910; and upon the face of the appli-

cation, below his signature, were the words: "This subscription carries with it a bonus of 100 per cent. of fully paid and non-assessable common stock of the company." A notice of allotment, dated the 11th November, 1910, was sent by the company to the appellant, that "by resolution of the directors, passed on the 7th day of November, 1910, 10 shares of the stock of this company were allotted to you in accordance with your application." It was contended that this was not an acceptance in the terms of the application, as there was no reference to the shares of common stock or their allotment. The Master was of opinion that the application, prospectus, allotment, and notice, constituted a sufficient contract, and that the appellant became a shareholder thereunder. The learned Judge said that the evidence warranted the finding of the Master, and that the appellant was properly placed on the list of contributories: Oakes v. Turquand (1867), L.R. 2 H.L. 325. Appeal dismissed with costs. George Bell, K.C., for the appellant. A. McLean Macdonell, K.C., for the liquidator.

RE DAVIDSON—BRITTON, J., IN CHAMBERS—JUNE 4.

Lunatic—Confinement in Asylum of Person of Weak Mind—Habeas Corpus—Return—Finding of Fact — Discharge — Ontario Habeas Corpus Act, R.S.O. 1914 *ch.* 84, *sec.* 7.]—Application on behalf of Judson Davidson, upon the return to a writ of habeas corpus, for an order discharging him from the custody of the keeper of an asylum or hospital for the insane. BRITTON, J., said that he had examined into the truth of the facts set forth in the return, read the affidavits and reports filed, and heard oral testimony; and he was of opinion that Judson Davidson should not at this time be further detained in custody under the proceedings set forth in the return. Judson Davidson was of weak mind, peculiar and eccentric to a degree, but, according to the evidence, quite able to take care of himself, and not likely to do hurt or harm to any person. There was no reason for his being in want, as a fund had been provided for his comfortable maintenance. It was established that he suffered from confinement. He is not now an insane person requiring to be detained against his will in an asylum or hospital for the insane. Order made, pursuant to sec. 7 of the Ontario Habeas Corpus Act, R.S.O. 1914 ch. 84, declaring that, although the return to the writ is good and sufficient in law, yet, upon the facts as found, the applicant is entitled to his discharge from custody, and so ordering. No costs. D. L. McCarthy, K.C., for the appli-

cant. C. L. Dunbar, for the Homewood Institute. W. H. Hunter, for the trustees of an estate of which the applicant is a beneficiary.

BROWNE v. TIMMINS—SUTHERLAND, J.—JUNE 4.

Contract—Evidence—Failure to Establish Agreement.]—Action to enforce an agreement, not in writing, alleged to have been made on the 8th February, 1907, by which the defendants agreed to take over certain mining properties in which the plaintiffs were interested and to compensate the plaintiffs for the moneys they had expended upon the properties. The learned Judge finds, upon the evidence, that there was no such agreement as alleged, and dismisses the action with costs. I. F. Hellmuth, K.C., for the plaintiffs. G. H. Watson, K.C., and J. B. Holden, for the defendants.

REO SALES CO. v. GRAND TRUNK RAILWAY SYSTEM—SUTHERLAND, J.—JUNE 5.

Carriers—Bill of Lading—Condition — Delivery of Goods Shipped on Payment of Draft—Delivery without Payment — Action by Vendors against Carriers—Damages—Third Party—Costs.]—In 1913, the plaintiffs, doing business at St. Catharines, Ontario, were the sole selling agents for Reo motor cars in Canada, and had appointed Morris & Lewington, of Hamilton, their sub-agents for the county of Wentworth. Wangeheim, who was brought in by the defendants as a third party, made an agreement with Morris & Lewington, on the 14th March, 1914, for the delivery on or before the 1st April, 1914, to Wangeheim of a Reo special touring car at the price of $1,400, f.o.b. Chatham, payment $100 deposit with order and balance on delivery of car. The $100 was paid at the time. A demonstrating car, which Wangeheim had seen at Hamilton, was sent to St. Catharines from Hamilton and overhauled, and, by arrangement between Morris & Lewington and the plaintiffs, was shipped by the latter on the 27th March, 1914, from St. Catharines by the defendants' railway, to Wangeheim at Chatham, under the terms of a bill of lading. Upon the back of the bill were the words, "On payment of draft deliver bill of lading to T. Wangeheim;" and attached to the bill of lading was a sight draft on Wangeheim for $1,300. On learning of the arrival of the car at Chatham, Wangeheim sent for Morris, who went to Chatham; Wangeheim and Morris took out the car, Wangeheim signing a writing

acknowledging that he had received the car from the defendants in good order. The defendants' servant told him that there were no charges. Wangeheim observed that the car was not a new one, and told Morris that he would not accept it. The car was left in Wangeheim's garage; but he declined to accept it as a compliance with his bargain, and refused to pay the draft. Wangeheim sued Morris & Lewington in a Division Court for the $100; in that action the present plaintiffs were added as defendants, and judgment was given against all the defendants, and the amount paid by them. The plaintiffs sued the defendants for damages for the wrongful delivery of the car to Wangeheim; the defendants brought Wangeheim in as a third party; and an order was made by the Master in Chambers directing that the questions between the defendants and the third party should be tried and disposed of at the trial of the action. The trial took place before SUTHERLAND, J., without a jury. At the trial it was not disputed that the car was not a new one. The learned Judge was of opinion that the defendants were bound by the terms of the bill of lading under which they received the car and undertook to transport and deliver it, and were not justified in delivering it to Morris and Wangeheim. The plaintiffs were, therefore, entitled to judgment against the defendants for $1,300 and interest from the 30th March, 1914, with costs. But, if the defendants elected to do so, they might obtain the car from the third party, transport it to St. Catharines, and deliver it to the plaintiffs within two weeks, and, upon their doing so, the plaintiffs' judgment against the defendants will be only for $100 damages and the plaintiffs' costs of the action and the third party proceedings. The defendants also to pay the costs of the third party. G. Lynch-Staunton, K.C., for the plaintiffs. W. N. Tilley, for the defendants. O. L. Lewis, K.C., for the third party.

DONOVAN v. WHITESIDES—SUTHERLAND, J.—JUNE 5.

Sale of Goods—Condition as to Quality—Non-fulfilment — Rescission—Return of Money Paid and Promissory Notes Given —Damages—Return of Goods.]—Action to recover $500 paid in cash to the defendants as part of the purchase-price of a yacht sold by the defendants to the plaintiff for $850, for the return of two promissory notes made by the plaintiff in favour of the defendants for $175 each, and for damages. The plaintiff set up that he relied on the statements made by the defendants and believed that the yacht was seaworthy, which turned

out not to be the case. The defendants counterclaimed for $375 upon the two notes. The action was tried without a jury at Toronto. The learned Judge finds that it was a term or condition of the agreement of sale that the yacht should be seaworthy; that it was not seaworthy at the time of the sale; and that the defendants knew it. Judgment for the plaintiff for $500 and interest from the 2nd June, 1914; for delivery up for cancellation of the two notes; and for $350 damages and the costs of the action. Counterclaim dismissed. The defendants to be entitled, on payment of the amount of the judgment, to the return of the yacht. J. M. Langstaff, for the plaintiff. H. C. Macdonald, for the defendants.

WALKER v. BROWN—BRITTON, J.—JUNE 5.

Receiver—Application for Receivership Order—Business and Property of Married Woman—Judgment Obtained against Husband—Absence of Fraud.]—Motion by the plaintiffs for the appointment of a receiver of the moneys coming from a drug-store carried on in the name of the defendant Effie F. Brown. It was alleged by the plaintiffs that the business and money were really the property of the defendant J. T. Brown, the husband of the other defendant, and should be available for payment of his debts, and that carrying on the business in the name of the defendant Effie F. Brown was a fraud upon the plaintiffs and other creditors, if any, of the husband. In 1905, the plaintiff Walker recovered judgment against the defendant J. T. Brown for more than $1,100. The motion was heard in the Weekly Court at Toronto. BRITTON, J., said there was no suspicion that the money invested by the defendant Effie F. Brown was the money of her husband, and there was no evidence of any fraudulent scheme in the purchase of the business by her and the employment of her husband to work for her. Reference to 34 Cyc. 18, 19. There was nothing shewn that would indicate any reasonable probability that the defendant Effie F. Brown intended to do anything with the property which would defeat the plaintiffs if judgment were recovered by them against her. Motion dismissed with costs in the cause to the defendant Effie F. Brown. Hamilton Cassels, K.C., for the plaintiffs. Grayson Smith, for the defendant Effie F. Brown.

CORRECTION.

In BURROWS v. GRAND TRUNK R.W. Co., ante 459, the senior counsel for the defendant railway company was *D. L. McCarthy*, K.C.