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APPELLATE DIVISION.

Second Divisional Court. November 7th, 1918.

MENZIES v. BARTLET.

Contract—Promise of Deceased Mortgagee (Aunt of Mortgagor) to Cancel Mortgage in Consideration of Services and Goods Supplied—Statute of Frauds—Action against Administrator with Will Annexed—Evidence—Legacy Given to Mortgagor—Findings of Trial Judge—Appeal—Costs—Payment for Goods Supplied.

An appeal by the plaintiff from the judgment of Falconbridge, C.J.K.B., ante 8, dismissing the action without costs.

The appeal was heard by Mulock, C.J. Ex., Clute, Sutherland, and Kelly, JJ.

G. H. Sedgewick, for the appellant.

A. R. Bartlet, for the defendant, respondent.

The Court varied the judgment below as follows: The defendant expressing his willingness to pay the plaintiff $82.25 for goods supplied by the plaintiff to Margaret Menzies, deceased, it is declared that her estate is indebted to the plaintiff in that amount, and the defendant is directed to pay that amount to the plaintiff. In other respects the judgment is affirmed and the appeal dismissed with costs.

FIRST DIVISIONAL COURT. NOVEMBER 8TH, 1918.

*SMITH v. ONTARIO AND MINNESOTA POWER CO. LIMITED.

Water—Erection of Dam in Navigable River—Maintenance and Operation Causing Injury to Owners and Occupants of Lands above Dam—Overflow of Water Retained and Stored—Excessive Rainfall—Act of God—Trespass—Ashburton Treaty—Right to Maintain Dam—"Water Communications"—Jurisdiction of Dominion Parliament—British North America Act, sec. 91 (10) —Navigation, Work for Advantage of—4 & 5 Edw. VII. ch. 139 (D.)—Act respecting Works in Navigable Waters, R.S.C. 1886 ch. 92—Order in Council—Damage to Land—Compensation —Rights of Land-owners—Rights of Squatters on Crown Lands—Agreement with Government of Ontario—Validity—6 Edw. VII. ch. 132 (O).—Evidence—Negligence—Damages—Reference —Costs.

Appeal by the defendants in the above and four other actions from the judgment of KELLY, J., 42 O.L.R. 167, 13 O.W.N. 445.

The appeal was heard by MEREDITH, C.J.O., MAGEE and HODGINS, JJ.A., RIDDELL, J., and FERGUSON, J.A.

W. N. Tilley, K.C., and A. D. George, for the appellants.

R. T. Harding and C. R. Fitch, for the plaintiffs, respondents.

RIDDELL, J., read the judgment of the Court. He said that it should be added to the facts set out by the trial Judge that the defendants obtained legislation from the Dominion Parliament and that the plans of their undertaking were approved by order of the Governor-General in Council under R.S.C. 1886 ch. 92, an Act respecting certain works constructed in or over Navigable Waters.

The defendants built their dam with the natural and necessary result of holding back the water in the river and also in the lake.

In 1916 there was an unusual flood. The water was higher than usual, even where there was no dam. There was nothing to indicate that the flood came under the category of actus Dei or vis major.

The first contention of the plaintiffs was that the dam was a mere trespass, and that the defendants had no right to maintain it because it was against the provisions of the Ashburton Treaty of 1842, art. II., which states "that all the water communica-

tions and all the usual portages along the line from Lake Superior to the Lake of the Woods, and also Grand Portage from the shores of Lake Superior to the Pigeon river as now actually used shall be free and open to the use of the citizens and subjects of both countries." The whole object of this clause was the advantage of those desiring to pass along the waters or the portage—there was no intention to take care of the rights of land-owners or others near the route, and such persons could not appeal to the Treaty. It was said that if the "water communications" had been left open the damage to the plaintiffs would not have occurred; but the damage did not arise from interference with the plaintiffs' right to pass along the water communications. Reference to Gorris v. Scott (1874), L.R. 9 Ex. 125.

The Dominion Parliament, under sec. 91 (10) of the British North America Act, has jurisdiction over navigation, and so has jurisdiction to cause or allow any act or work within the Dominion for the advantage of navigation; this dam was considered such a work, and the Dominicn had jurisdiction in the premises. The Dominion Act respecting the defendant company, 4 & 5 Edw. VII. ch. 139, required that the plans should be submitted to the Governor-General in Council, and they were submitted accordingly, but explicitly under the general Act, R.S.C. 1886 ch. 92, secs. 1 to 9 of which gave power to the Governor-General in Council to approve such a work as the defendants'. The order in council of the 19th September, 1905, was valid; it was based upon the proposition that "a clause in the Act of incorporation of the company . . . . makes all damages to lands caused by their works a charge to be borne by them." The defendants could not be allowed to retain the advantage of an order in council if procured by a misstatement of fact. The words quoted should be read as a condition imposed on the defendants or a limitation of their powers. The order in council was never intended to give the defendants the right to do damage to lands without paying for it, and the words did not necessarily import such power.

The defendants had no power to damage land without paying compensation; but that consideration was not sufficient to dispose of these actions.

All but two of the plaintiffs were mere squatters on land of the Crown in Ontario, and their rights could not prevail against the Crown. The agreement of the 9th January, 1905, gave the defendants permission to flood the "lands . . . the property of the Crown in Ontario under the control and administration of the Government of Ontario and . . . no permission is given . . . to overflow or cause to be overflowed any lands not the property

of the Crown in Ontario and not under the control and administration of the said Government . . ." There was nothing anywhere in the Ontario proceedings giving the defendants the right to overflow land not that of the Crown and not under the control of the Crown.

As against the plaintiffs Tighe and M. H. Smith, the defendants were not protected by the Ontario proceedings; but the other plaintiffs were in a different position.

If the agreement was valid—and it had been recognised by the Ontario Legislature in 1906 by 6 Edw. VII. ch. 132—the defendants had the right to flood the lands upon which the plaintiffs' buildings stood, being given such right by the owner. As to the plaintiffs Seth Smith, Gagne, and Foster, the appeal should be allowed and their actions should be dismissed, but without costs in view of the facts.

As to the plaintiffs Tighe and M. H. Smith, the principle of the decision of the House of Lords in Greenock Corporation v. Glasgow and South-Western R. W. Co., [1917] A.C. 556, was applicable. There was no pretence of prescription, and but for the dam the flood would have passed these two plaintiffs (not wholly but in part) scatheless.

If the case depended upon negligence, negligence could not be found on the evidence.

As to damages, the plaintiffs Tighe and M. H. Smith were entitled to recover the difference between the whole and what would have occurred in the absence of the dam: Nitro-Phosphate and Odam's Chemical Manure Co. v. London and St. Katharine Docks Co. (1878), 9 Ch. D. 503; Workman v. Great Northern R.W. Co. (1863), 32 L.J.Q.B. 279.

As to these two plaintiffs there should be a reference to the Master to fix the damages if the parties could not agree. The damages should be confined to lands not on the reservation for roads. The costs of the reference and of this appeal should be disposed of by the Master, but the defendants should pay the costs of the action, including the trial before Kelly, J., on the Supreme Court scale. If these plaintiffs prefer not to take a reference, the action as to them will be dismissed without costs, and there will be no costs of the appeal to them or to the defendants.

Judgment below varied.

HIGH COURT DIVISION.

MASTEN, J. NOVEMBER 5TH, 1918.

MEMBERY v. SMITH.

Highway—Unopened Road Allowance—Obstruction by Fences—Substantial Injury to Plaintiff—Deprivation of Access to Land—Right to Maintain Action—Surveys Act, R.S.O. 1914 ch. 166, sec. 19—Mandatory Injunction—Trivial Dispute—Costs.

Action for a mandatory injunction requiring the defendant to remove an obstruction across an alleged highway.

The action was tried without a jury at Napanee.
D. Urquhart, for the plaintiff.
J. L. Whiting, K.C., for the defendant.

MASTEN, J., in a written judgment, said that the plaintiff was the owner of lots 19 and 20 on the south side of First street according to a plan of Adolphustown. The defendant was the owner of a number of adjoining lots. Upon a plan of the village made in 1825 there was shewn, running easterly and westerly through the lands of the plaintiff and defendant, an allowance for a highway. It was admitted that this allowance had never been opened, taken over, or improved by the municipal authorities. The defendant had been accustomed to use his lands for purposes of pasture; and, in order to keep his cattle from straying into the village, had placed fences across the whole peninsula at the extremity of which the plaintiff's lands were situated. The lands of the defendant intervened between the lands of the plaintiff and the principal portions of the village. The plaintiff's access by land to his lots was thus obstructed ; but at First street the defendant had arranged an entrance through his fence by means of bars. The defendant did not assume to prevent the plaintiff from travelling along First street to his lots, but declined to remove the fences or bars where they were on the unopened highway.

The case raised one point only, whether the plaintiff had sustained such substantial injury beyond that suffered by the rest of the public as enabled him to maintain this action.

Notwithstanding that the plaintiff's lands were of small extent, producing only wild and marsh grass and fit only for a little

pasturing, and were of trifling value, and notwithstanding that the lands had never been used by the plaintiff and that he had not shewn actual pecuniary loss, yet, having regard to the facts that he owned the lands in fee simple and access to them by land was interfered with, he came within the decided cases, and must succeed. See O'Neil v. Harper (1913), 28 O.L.R. 635.

The defendant asserted a right to put a fence and bars across the road allowance, and refused to remove them. The plaintiff was entitled to free and uninterrupted passage over this highway which had never been closed. That it had never been opened up, cleared, and improved by the municipality did not make it any the less a legal highway: see the Surveys Act, R.S.O. 1914 ch. 166, sec. 19.

There should be judgment for the plaintiff ordering the defendant to remove all obstructions placed by him or his predecessors in title on the highway or road allowance; enjoining him from hereafter placing any obstruction thereon; and directing the defendant to pay the plaintiff his costs, fixed at $50.

LATCHFORD, J., IN CHAMBERS. NOVEMBER 5TH, 1918

*REX v. NAZZARENO.

Ontario Temperance Act—Magistrate's Conviction for Offence against sec. 40—Having or Keeping Intoxicating Liquor on Premises for Sale, Barter, or Other Disposal—Evidence—Entries in Books of Express Company—Record of Sales—Letter Written by License Inspector—Admissibility—Analysis of Native Wine Found on Premises—Purchaser of Native Wine—Onus—Sec. 88 of Act—"Other Disposal"—Amendment.

Motion to quash the conviction of the defendant by the Police Magistrate for the City of Hamilton for having or keeping intoxicating liquor on his premises for the purpose of sale, barter, or other disposal, contrary to the Ontario Temperance Act, 6 Geo. V. ch. 50, sec. 40.

M. J. O'Reilly, K.C., for the defendant.

J. R. Cartwright, K.C., for the Corwn.

LATCHFORD, J., in a written judgment, said that it was objected that evidence of entries in the books of an express company,

of a record which the License Inspector had obtained at St. Catharines, and of a letter which he had written, had been improperly admitted.

The learned Judge said that he was satisfied that the evidence of the entries was admissible for the little it was worth. It would have been clearly proper if followed by evidence of the person who actually delivered the consignments. In the absence of such evidence, the entries had no probative value; and that was the utmost that could be objected to them. No evidence of any record was admitted or tendered. It was stated as a fact by the License Inspector, when giving his testimony, that he had such a record with him when questioning the defendant—a record of the number of gallons of native wine the defendant had got from St. Catharines. A letter which the Inspector had written was referred to merely to refresh his memory as to whether it was not 40 gallons rather than 30 which he mentioned to the defendant—a matter of no importance. There was evidence of the taking of a sample of the wine and of its analysis. Rex v. Melvin (1916), 38 O.L.R. 231, and Rex. v. Bracci (1918), 14 O.W.N. 305, had no application.

While a manufacturer of native wines is permitted to sell his product, a purchaser, if prosecuted, is subject to the onus imposed by sec. 88. The defendant was a person prosecuted for having or keeping liquor on his premises for the purpose of sale, barter, or other disposal. Proof was given that he had in his possession a quantity of native wine, containing over 25 per cent. of proof spirit, and therefore "liquor" (sec. 2 (*f*)). "Then," to quote the concluding words of sec. 88, "unless such person prove that he did not commit the offence with which he is so charged he may be convicted accordingly." The onus so cast upon the accused he did not attempt to remove.

The words "other disposal" are not as innocuous as was contended: Regina v. Walsh (1897), 29 O.R. 36. In any case their use did not vitiate the conviction. If they did, they could be struck out under the powers conferred by sec. 1124 of the Criminal Code, made applicable to motions like this by sec. 92 (9) of the Ontario Temperance Act and sec. 4 of the Summary Convictions Act, R.S.O. 1914, ch. 90.

Motion dismissed with costs.

LATCHFORD, J. NOVEMBER 7TH, 1918.

*SUSMAN v. BAKER.

Contract—Sale and Delivery of Goods—Breach—Delivery of Smaller Quantities than those Contracted for—"About"—"Approximate"—Percentage Allowance—Damages—Mistake in Wording of Written Contract—Finding of Referee—Appeal.

An appeal by the defendants and a cross-appeal by the plaintiffs from the report of a referee, upon a reference directed by the judgment in the action, to ascertain the plaintiffs' damages upon breaches of contracts for the sale and delivery of goods.

The appeal and cross-appeal were heard in the Weekly Court, Ottawa.

G. D. Kelley, for the defendants.

A. B. Cunningham, for the plaintiffs.

LATCHFORD, J., in a written judgment, said that the contract of the 20th October, 1916, was for "about" 150 tons of shell steel turnings at $6.25 a gross ton f.o.b. Hamilton. The second contract, 31st October, 1916, was for "approximate quantities" of "200 tons steel shell turnings at $3.60 per gross ton and 100 tons shell ends and defective shells at $12.75 per gross ton all f.o.b. Renfrew."

It was contended by the defendants that "200" in the second contract was inserted by mistake. The referee discredited the evidence adduced by the defendants in this regard; and the appellate tribunal should not interfere: Wood v. Haines (1917), 38 O.L.R. 583, 586 (P.C.); Morrow Cereal Co. v. Ogilvie Flour Mills Co. Limited, a recent decision of the Supreme Court of Canada, not yet reported, restoring the decision of the trial Judge, which was but in part affirmed by the Appellate Division, Ogilvie Flour Mills Co. Limited v. Morrow Cereal Co. (1917), 41 O.L.R. 58.

In ascertaining the meaning of the words "about" and "approximate," and determining whether the allowance of 5 per cent. off the quantities specified should not be made, as was contended by the plaintiffs, or was too low, as contended by the defendants, the fact must be regarded that in neither case was the sale made a sale of a bulk lot of scrap with an estimate of the probable quantity.

Where no such independent circumstances are referred to, and the engagement is to furnish goods to a certain amount, the quantity specified is material, and governs the contract. The addition of the qualifying words in such cases—when not supplemented by other words—provides only against accidental variations arising from slight and unimportant excesses or deficiencies in number, measure, or weight: Brawley v. United States (1877), 96 U.S. 168; Steel Co. of Scotland v. Tancred Arrol & Co. (1899), 26 Sc. L. Repr. 305, 314; 1 Corp. Jur. 337.

In the contracts in this case, the quantities mentioned were not estimates, and were not affected by supplemental words other than "about" and "approximate," as was the case in Morris v. Levison (1876), 1 C.P.D. 155, and in Miller v. Borner & Co., [1900] 1 Q.B. 691.

The use of the words "about" and "approximate" was, no doubt, due to the possibility of their being a slight excess or deficiency in the quantities shipped; yet, in the case of the first contract, precisely 100 tons, out of 150 tons of shell turnings contracted for, were delivered; and, under the second contract, the quantity delivered was 175 instead of 200 tons. The total default amounted to 75 tons. Upon the shell ends and defective shells, the total delivery was 38 $\frac{1}{7}$ tons, leaving a deficiency of 61 $\frac{6}{7}$ tons.

In the circumstances disclosed by the evidence, the percentage allowed by the referee not only must not be increased, but must be eliminated in arriving at the amount of damages.

The defendants' appeal should be dismissed with costs and the plaintiffs' cross-appeal allowed with costs, and the damages increased by $139.37.

As found by the referee, the defendants had not established that they suffered any damages by the refusal of the plaintiffs to accept the car of scrap steel shipped from Toronto to Hamilton—prices had so advanced that there was no loss.

FALCONBRIDGE, C.J.K.B. NOVEMBER 8TH, 1918.

PIGGOTT v. HEDRICK.

Promissory Notes—Agreement for Renewal—Cancellation—Misrepresentation—Evidence—Immateriality—Action on Notes—Judgment.

Two actions brought to recover the amounts due upon several promissory notes.

The actions were tried without a jury at Sandwich.

J. H. Rodd, for the plaintiff.

F. C. Kerby, for the defendant.

Falconbridge, C.J.K.B., in a written judgment, said that the defendant, being largely indebted to the plaintiff's firm, entered into an agreement on the 14th March, 1918, which contained the following clause: "And the party of the second part further agrees that he will from time to time renew said notes for the balance that is due after applying any moneys received by him." In the margin was written the following memorandum: "This clause is hereby cancelled." This was signed by the plaintiff and the defendant and witnessed by one Nickell.

The defendant contended that he was induced to sign the memorandum of cancellation by the representation made to him by the plaintiff that his solicitor approved of his so doing. He swears that what the plaintiff told him was, "The Colonel says it's O.K. to do it." The Colonel (Wigle, K.C.) said that what he did say was, "Whatever was satisfactory to Hedrick was O.K. to me."

The onus was, of course, upon the defendant to establish misrepresentation. The clause itself was unreasonable, because, if read literally, it would mean that, upon paying any sum, he could get renewals for all time; and, when it was taken into consideration that there was nothing actually requiring legal advice (like the construction of an agreement), it was after all a matter for the exercise of the defendant's own judgment.

The communication between the plaintiff and Colonel Wigle was by telephone, the defendant being present when the plaintiff telephoned.

The learned Chief Justice was not satisfied that any misrepresentation was made as to what was said; but in any event, in view of the above, it was not material.

There should be judgment for the plaintiff for the full amount claimed.

If there was any difference between the parties as to the amount of the judgment, the amount might be settled by the local registrar.

Judgment for the plaintiff with costs.

MIDDLETON, J., IN CHAMBERS. NOVEMBER 8TH, 1918.

*GRAINGER v. ORDER OF CANADIAN HOME CIRCLES.

Execution — Judgment Declaring Right of Plaintiff to Future Annual Payments, but no Direction for Payment or Recovery—Rule 533—Execution Issued after Accrual of Payments Set aside as Irregular—Judgment Entered in Conformity with Jugment Pronounced—Supplementary Order under Rule 523 for Payment of Sums Accrued—Effect of Subsequent Legislation and Amendments to Constitution of Friendly Society—5 Geo. V. ch. 30—7 Geo. V. ch. 99.

Motion by the defendants to set aside a writ of execution issued by the plaintiff.

N. Sommerville, for the defendants.
I. F. Hellmuth, K.C., for the plaintiff.

MIDDLETON, J., in a written judgment, said that on the argument it was agreed that he should deal with the case as if a cross-motion had been made to amend the judgment entered in the action so as to make it conform with the judgment pronounced, or for an order by way of supplementary relief directing payment of the sums for which execution was issued.

The plaintiff was the holder of a membership certificate in the defendant Order, a friendly society, under which, on attaining the age of 70, he became entitled to $1,000, and a further sum of $1,000 would become payable on his death. By an Act of the Ontario Legislature passed in 1903, 3 Edw. VII. ch. 15, sec. 8, the defendants were permitted to pay the $1,000 in 10 annual instalments of $100 each.

In this action, brought by the plaintiff on his own behalf on his own policy, it was declared that he was entitled to receive the $100 per annum in the years 1915, 1916, 1917, and 1918, upon his contract as varied by the statute, without payment of any assessment; and judgment was given for the $100 due on the 1st May, 1914. This judgment was pronounced on the 10th June, 1914: Grainger v. Order of Canadian Home Circles, 31 O.L.R. 461, affirmed (1915) 33 O.L.R. 116.

The $100 due on the 1st May, 1914, was paid by the defendants. In 1918, execution was issued upon the judgment for the 4 subsequent annual payments, although the judgment merely declared the right as to these payments, and did not contain either a direction for payment or for the recovery of these sums.

Under Rule 533, a judgment for the rcovery by or payment to any person of money may be enforced by the issue of a writ of execution; but, before any execution can issue, there must be a judgment directing payment or recovery; and this cannot be implied from a mere declaration of right.

The issue of the writ of execution was, therefore, irregular.

It could not be said that the judgment as entered was not in accordance with the judgment pronounced.

The application, under Rule 523, for a supplementary order should be entertained, and the effect of the legislation upon which the defendants relied as relieving them from liability should be considered.

Reference to Hoffman v. McCloy (1917), 38 O.L.R. 446, as to the scope of Rule 523.

To refuse to implement the declaratory judgment by directing payment of the sums falling due in the 4 years since the judgment would be an undue narrowing of the scope of the Rule.

Had the Act of 1915, 5 Geo. V. ch. 30 , which changes the law and provides that no person who has become or may become entitled to an instalment under the earlier Act shall be entitled to receive payment unless he continues to be a member of the society and pay his dues, been in force when the action was tried, no doubt it would have precluded the pronouncing of the judgment. That statute is retrospective in its operation; but a retrospective statute will not interfere with rights that have already passed into judgment unless the intention of the Legislature so to interfere is clearly expressed.

Reference to Re Merchants Life Association (1901), 2 O.L.R. 682; Reid v. Reid (1886), 31 Ch. D. 402, 408, 409.

The defendants also relied on the effect of the distribution of a fund of $200,000 in accordance with an undertaking given when the legislation of 1905 was applied for. But in the judgment of the appellate Court, 33 O.L.R. 116, it is stated that the defendants asked that the judgment given at the trial be varied as so to provide that payment should be made from that fund only. This was expressly refused.

It was said that amendments to the constitution of the defendant society, made in 1915, were intended to be retroactive and to include the plaintiff; but such domestic legislation could not affect a judgment of the Court.

Again, it was said that these amendments were confirmed by an Act passed in 1917, an Act respecting the defendant society, 7 Geo. V. ch. 99; but there was nothing in that Act indicating an intention to interfere with the judgment.

The execution should be set aside, and an order should now be made for payment of the 4 annual sums with interest.

Success being divided, there should be no costs.

MIDDLETON, J., IN CHAMBERS. NOVEMBER 8TH, 1918.

BOSTON LAW BOOK CO. v. CANADA LAW BOOK CO. LIMITED.

Practice—Ex Parte Order Improperly Made Set aside—Rules 213, 216—Costs.

Appeal by the defendants from an ex parte order of the Master in Chambers made on the 25th October, 1918.

R. T. Harding, for the defendants.
A. Bicknell, for the plaintiffs.

MIDDLETON, J., in a written judgment, said that the action had been pending for some time, and had been entered for trial at the Toronto sittings. A commission had been issued many months ago; the order provided for the return of the depositions in 3 months. The depositions had not been taken, and a motion was made to extend the time, but judgment on that motion had not been given.

The case now being about to be reached on the trial list, the plaintiffs' solicitor obtained, ex parte, an order directing: (1) the issue of letters rogatory; (2) that the depositions taken should be filed and might be given in evidence saving just exceptions; (3) that the trial of the action should be stayed until the depositions were filed.

The defendants appealed against the order as improperly made ex parte.

Counsel for the defendants was willing to allow the letters rogatory to stand without prejudice to his contention that the commission to which they were ancillary had been abandoned by the failure of the plaintiffs to attempt to have it executed within the time limited or at all until the present.

The making of an ex parte order is expressly prohibited: Rule 213. The only exception is that found in Rule 216, permitting an interim ex parte order when the delay necessary to give notice might entail serious mischief.

Reference to Joss v. Fairgrieve (1914), 32 O.L.R. 117.

Any order or decision which in any way affects the right of another, in accordance with the principles of natural justice, ought to be made after due notice.

The order should be set aside and vacated with costs to be paid by the plaintiffs to the defendants in any event of the action; but, the defendants consenting, the letters rogatory, which have been sent overseas, may stand on the terms indicated.

DUGGAN V. MCCAULEY—BRITTON, J.—NOV. 9.

Principal and Agent—Purchase of Property by Agent for Principal—Evidence—Declaration—Conveyance—Damages—Adjustment of Account—Costs.]—Action by the surviving trustee of the Dale estate for a declaration that the defendant, in procuring an option for the sale to him of land adjoining the nurseries of the Dale estate at Brampton, together with plant and nursery stock, from one Fendley, was acting as the plaintiff's agent, and accepted the option and obtained a conveyance from Fendley as such agent, and for a conveyance of the land, possession, and damages. The action was tried without a jury at Brampton. BRITTON, J., in a written judgment, found the facts in favour of the plaintiff, upon conflicting evidence, and gave judgment declaring that the defendant holds the land and the other property for the plaintiff, and ordering the defendant to convey the land to the plaintiff, and to hand over the stock and plant purchased from Fendley, upon the plaintiff assuming the payment of the balance of the purchase-money and all existing mortgages and liabilities. The learned Judge said that he was unable to find that the plaintiff had suffered any specific damage for which the defendant ought to pay. Reference to the Local Registrar at Brampton, if the parties cannot agree upon the amounts to be paid by the plaintiff. The defendant must pay the plaintiff's costs of the action. H. H. Davis, for the plaintiff. C. R. McKeown, K.C., for the defendant.

NOTE.

In STOVER V. LAVOIA (1906), 8 O.W.R. 398, not elsewhere reported, a case of considerable importance, decided by the late Chancellor, Sir John Boyd, there is a curious mistake or conglomeration of mistakes on p. 399. The 3rd paragraph on that page should read as follows:—

"The like conclusion was reached in the United States at an early period: Handly's Lessee v. Anthony (1820), 5 Wheat. 374, 385, where Marshall, C.J., said: 'The shores of a river border on the water's edge,' i.e., at low water."