# RECENT DECISIONS.

## 1. Supreme Court of Canada.

On appeal from the Appellate Division of the Supreme Court of Ontario.

Judges present: Sir Louis Davies, C.J., and Idington, Duff, Anglin and Mignault, JJ.

December 21st, 1923.

*REDICAN* v. *NESBITT.*

*Vendor and purchaser—Contract for sale—Completion—Cheque for purchase money—Stoppage of payment—Fraudulent misrepresentation—Instruction to jury—Misdirection.*

A contract for the purchase and sale of property is completed when the purchaser receives an executed conveyance and then gives a cheque for the purchase price which the vendor accepts as cash though payment by the bank is stopped before it is presented.

In an action for the purchase money under such contract to which the purchaser pleaded fraudulent misrepresentations in respect to the property, the trial Judge misdirects the jury in telling them that proof of intention to deceive is essential to support such plea, and in refusing to submit to them the question of whether or not the vendor made the representations, without caring whether they were true or not, to induce the contract. A new trial was therefore necessary.

Appeal dismissed with costs.

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On appeal from the Appellate Division of the Supreme Court of Ontario.

Judges present:—Sir Louis Davies, C.J., and Idington, Duff, Anglin and Mignault, JJ.

December 21st, 1923.

*GRAND TRUNK RY. CO.* v. *MURPHY.*

*Negligence—Railway—Injury to passenger—Announcement of stoppage—Stoppage short of station—Mistaken belief of passenger—Finding of jury.*

M. was travelling to West Toronto on a Grand Trunk train. When the last station on his journey had been passed an official went through the train calling out "next stop," or "next station," West Toronto. Before reaching that station, the train had to stop for a few seconds in

obedience to a stop signal and M. went to the platform of his car, on which there were no step doors, and alighted, falling to the ground and sustaining severe injury. In an action against the railway company, he admitted that he had understood the announcement to mean that the next station would be West Toronto. The jury found negligence by the company and that such negligence was—"We believe that the defendants should . . . when compelled to stop trains use precaution to prevent passengers from alighting." A verdict for M. was maintained by the Appellate Division.

*Held*, Idington and Duff, JJ., dissenting, that the action should be dismissed; that it was the duty of the officials of the company to stop the train as they did and they were under no duty, either statutory or imposed by regulations of the Railway Board, to warn passengers that the train had not reached the station, which was the only precaution suggested on M.'s behalf as available. And there was no breach of the common law duty to carry safely as, owing to the brief period of stoppage and the haste in which M. left the car, an effective warning was not possible in the circumstances.

*Per* Duff, J.—By the announcement "next stop West Toronto," M. was placed in a situation which, without further warning, might be one of peril, and the trial Judge refused to submit to the jury the suggestion of counsel that the announcement should have been accompanied by a warning that the train might stop at the semaphore, basing his refusal on the admission of M. that he understood the announcement to mean that the next station was West Toronto. This may have been regarded by the jury as a direction that on this crucial question such admission was conclusive against M., and there should be a new trial, the finding of the jury as to negligence being too vague and uncertain to permit of a judgment against the company.

Appeal allowed with costs.

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2. Exchequer Court of Canada.

Audette, J. January 30th, 1924.

*THE KING* v. *WM. GOLDSTEIN ET AL.*

*Expropriation—Lease-hold—Compensation for damage to lessee—Loss of estimated profits of business not recoverable—Diminution in good-will—Elements of damage.*

This was an information to have the compensation to be paid to a lessee of a store on premises expropriated by the Crown fixed by the Court in respect of damage done to his tenancy. The case was heard in Toronto and judgment was rendered on the 30th January, 1924, holding, that while under the rule observed by the Courts in assessing compensation in expropriation cases, allowance ought not to be made for loss of business or estimated profits, yet where a lessee of a store has suffered a diminution of good-will, he is entitled to compensation therefor although it is in the nature of a business loss.

2. That, in addition to an allowance for loss suffered in respect to the good-will, in assessing the compensation to a lessee of premises expropriated, allowance must be made for the reasonable cost of moving, loss of time, storage and depreciation in fixtures and dislocation of business occasioned by such removal.

EDITOR'S NOTE.—Lord Macnaughten in *Trego* v. *Hunt* (1896) A. C. 7 at p. 24, observes: "Often it happens that the good-will is the very sap and life of the business, without which the business would yield little or no fruit."

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AUDETTE, J. February 7th, 1924.

*W. F. CANAVAN* v. *A. ST. C. RYLEY.*

*Patents — Conflicting applications — Commissioner of Patents functus officio after declaration of conflict — Motion to refer matter back to Commissioner—Practice.*

Plaintiff and defendant applied for patents and the Commissioner found there was conflict between the two applications. The plaintiff then took action before this Court to have it declared who was the first inventor. After issue joined, the defendant moved to have the record returned to the Commissioner of Patents for his further consideration, in view of the material and facts since disclosed, which, it was alleged, would satisfy the Commissioner that there was no patent right involved. Upon these facts his Lordship held (following *Permutit Co.* v. *Borrowman*, 1924, Ex. C. R. 6), that the Commissioner having declared a conflict between the applications had thereby become *functus officio*; and that, moreover, if the Court referred the record back to the Commissioner after the parties had had communication of each other's application, it would be doing something against the very spirit and letter of the Act, which requires absolute secrecy until completion of the application.

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AUDETTE, J. February 4th, 1924.

*ATTORNEY-GENERAL FOR CANADA* v. *A. E. PUGH.*

*Crown—Soldier Settlement Act, 1919, Section 48—Warrant of possession—When may be obtained.*

The petitioner herein moved in Chambers to obtain an order for the issue of a warrant of possession against the respondent, and Mr. Justice Audette held, that where the Crown had entered into an agreement with a returned soldier for the sale to him of land, under the provisions of the Soldier Settlement Act, 1919, it was not open to the Crown, upon his failure to perform his part of the agreement, which had been cancelled as provided for by the Act, to obtain the warrant of possession referred to in Section 48 of the said Act; because that Section limits the issue of a warrant to cases where the Crown has acquired land either

by voluntary or compulsory purchase, and resistance or opposition is made by some person preventing the Crown from entering upon and taking possession of the same.

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MACLENNAN, L.J.A. **February 5th, 1924.**

(Quebec Admiralty District.)

*THE CORPORATION OF THE TOWN OF WESTON* v. *THE STEAMER RIVERTON.*

*Shipping—Bill of lading—Carriage—Delivery—Burden of proof—Recovery against ship for shortage—Customs duty paid on shortage.*

This was an action against a ship to recover from it the amount paid to the shipper for the shortage in the delivery of coal on the defendant ship. His Lordship held that whatever effect should otherwise be given to the words "weight unknown" in a bill of lading for coal, where the master of the ship stated in evidence that the bill of lading showed the actual weight taken on board, and the consignee proved that the quantity delivered to him was less than was stated in the bill of lading, the onus was upon the ship-owner to establish that the weight in bill was wrong; this he may do by showing mistakes by tally-men from whose tallies the bill of lading was made out, or by indirect evidence sufficient to satisfy the Court, beyond reasonable doubt, that he delivered all he received.

2. That in such a case where the ship-owner has failed to prove that the quantity mentioned in the bill of lading was not in fact put on board, the ship was bound to deliver the full quantity stated in the bill of lading; and that the consignee having paid the shipper for the full quantity, was entitled to recover the proportion of the purchase price represented by such shortage against the ship.

3. That although the amount of the customs duty erroneously paid by the consignee on such shortage might entitle him to claim a refund from the customs authorities, it cannot be claimed as an element of damage against the ship; and that likewise amounts overpaid for handling and discharging a cargo must be claimed against those employed to do the work and not against the ship.

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