

the consent of both parties to a reduction of damages was necessary.

*Per* Gwynne, J., that two appeals were not necessary, and in any event the appeal on the rule for leave to enter a nonsuit should be dismissed with costs, and only one bill of costs should be taxed.

*Christopher Robinson, Q.C.*, and *Bodwell* for the appellant.

*S. H. Blake, Q.C.*, and *Gormully*, for the respondent.

OTTAWA, June 14, 1889.

New Brunswick.]

MILLER V. STEPHENSON.

*Goods sold and delivered—Evidence—To whom goods credit given—Direction to jury—Withdrawal of evidence from jury—New trial.*

In an action against McK. and M. for goods sold and delivered, the plaintiff swore that he had sold the goods to the defendants and on their credit, and his evidence was corroborated by the defendant Mc.K. The defence showed that the goods were charged in plaintiff's books to C. McK. & Co. (the defendant McK. being a member of both firms), and credited the same way in C. McK. & Co's books, and that the notes of C. McK. & Co. were taken in payment, and it was claimed that the sale of the goods was to C. McK. & Co.

The trial Judge called the attention of the jury to the state of the entries in the books of the plaintiff and of C. McK. & Co., to the taking of the notes, and to all the evidence relied on by the defence, and he left it entirely to the jury to say as to whom credit was given for the goods.

*Held*,—affirming the judgment of the Supreme Court of New Brunswick, that the case was properly left to the jury, and a new trial was refused.

Appeal dismissed with costs.

*Weldon, Q.C.*, and *C. A. Palmer* for appellant.

*McLeod, Q.C.*, and *A. S. White* for respondent.

OTTAWA, June 14, 1889.

New Brunswick.]

CANADIAN PACIFIC RAILWAY CO. v. WESTERN UNION TELEGRAPH CO.

*Telegraph Company—Incorporated in the United States—Power to operate line in Canada—Sole right of operating over line of Canadian railway—Agreement therefor—Violation of railway charter—Restraint of trade.*

In 1869 the European & North American Railway Company entered into an agreement with the Western Union Telegraph Company, a company incorporated in the State of New York with the right of constructing lines of telegraph and operating the same in the State, by which agreement the telegraph company was granted the exclusive right of constructing and operating for 99 years a line of telegraph over the road of the railway company from Boston, Mass., to St. John, N.B. In 1888 the latter road was operated by the New Brunswick Railway Company under lease from the St. John & Maine Railway Company, and the Canadian Pacific Railway Company in that year undertook to establish a telegraph line from Montreal to St. John, and run the same over that portion of the road controlled by the Western Union Company, lying between Vanceboro', Maine, and St. John. The Supreme Court of New Brunswick sitting in Equity made a perpetual injunction restraining the Canadian Pacific Company and the New Brunswick Railway Company from interfering with their exclusive right in building the said line. On appeal to the Supreme Court of Canada from the decree ordering the issue of such injunction:

*Held*,—Gwynne, J., dissenting, that the fact of the company being a foreign corporation empowered by its charter to construct and operate telegraph lines in a foreign country, does not prevent it from enforcing the agreement for an exclusive right of operating such lines in Canada, and the injunction should be maintained.

*Per* Gwynne, J., that such a power vested in a foreign corporation might be very prejudicial to the interest of the inhabitants of Canada, and should not be recognized nor given effect to in the courts of this country.

*Held*, also, that the agreement with the telegraph company did not create a monopoly in favor of that company, and was not an