

with this exception, that other things being equal the defendant has the prior location (now cured of all irregularity) by over four years. As Mr. Justice Drake said in *Hero v. Hall*, under such circumstances "the Court has to fall back upon prior location and record," and I feel this is the only safe rule to be guided by. It is in accord with the legal maxim "Qui prior est in tempore, potior est in jure," which seems particularly applicable to mining titles. The action will be dismissed with costs.

[A note of this case appeared ante p. 471, but it was thought desirable to give the judgment in full.]

Full Court at Vancouver.

[June 30.]

WOOD v. CANADIAN PACIFIC RAILWAY COMPANY.

*Railway—Master and servant—Personal injuries—Action for negligence—Precautions against accident—Fellow-servant.*

The plaintiff, a conductor in employ of defendant company was injured while uncoupling cars on a side track, the accident being caused by the plaintiff's foot becoming entangled in the long grass which had been allowed to grow on the track. The company had a sectionman and road-master whose duties were to keep the road in order.

*Held*, (affirming the judgment of IRVING, J.,) in a common law action for damages, that the company was not liable. A railway company is not liable for personal injuries sustained by an employee by reason of a defect in the track, provided the track was properly constructed and competent workmen were employed to keep it in order.

*Martin*, Q.C., Attorney-General, for appellant. *Davis*, Q.C., for respondent.

## Flotsam and Jetsam.

A legal contemporary has had some good stories connected with legal history, which are vouched for as being true. The following has a fine Irish flavor. Mr. Power, a Baron of the Exchequer Court, was proved by the Lord Chancellor Clare to have embezzled public funds. Determining to be revenged upon the Chancellor, he called at his house for the purpose of assassinating him, but as he was not at home, the judge drove to the mouth of the Liffey, sent his coachman home, and with an umbrella over his head—it was raining at the time--leaped into the river and was drowned. Surely it would occur to none but an Irishman to keep his head dry to the last moment.