McCarthy, Q.C., with him *Strathy*, for the respondent.

Appeal dismissed.

ROONEY v. LYON.

From Q.B.] [Sept. 15.

Insolvent Act, 1875—*Confirmation of discharge.*

Held, (Burton, Patterson, Moss, JJ.A., and Proudfoot, V.C.,) that an order confirming a deed of composition and discharge is final and conclusive as to all matters preliminary to its making, unless it has been reversed on appeal.

M. C. Cameron, Q.C., *Monkman* with him, for the appellant.

T. Ferguson, Q.C., for the respondent.

Appeal dismissed.

BROWN v. GREAT WESTERN RAILWAY CO.

From Q. B.] [Sept. 15.

Two lines crossing—Collision—Use of brakes—Negligence.

The defendants' railway crossed the Grand Trunk Railway on a level. The train on the defendants' line was approaching the crossing, and the air brakes for some reason failed to act. It was then too late to stop the train with the hand brakes or by reversing the engine, though every effort was made, and a collision occurred with a train on the other line, of which the plaintiff was a conductor, by which he was seriously injured.

It was shewn that these brakes were in common use on railways, and that the brakes in question had been twice examined and frequently used on that day, and found all right and effective.

Sec. 143 Con. Stat. C. cap. 66 enacts that "every locomotive or railway engine or train of cars on any railway shall, before it crosses the track of any other railway on a level, be stopped for at least the space of three minutes."

Held, (Hagarty, C.J. C.P., Patterson, J.A., and Galt, J.,) Moss, J.A., dissenting, that the defendants were guilty of negligence in not applying the air brakes at a sufficient distance to enable the train to be stopped by other means in case of these brakes giving way.

Held, also, that the statute imposed upon the defendants an absolute duty to stop for three minutes, and that their omission to do so rendered them liable for the injury sustained by the plaintiff.

M. C. Cameron, Q.C., for the appellants.

W. Rock, Q.C., for the respondent.

Appeal dismissed.

HOWELL v. MCFARLAND.

From C. C. Haldimand.] [Sept. 15.

Chose in action—Assignment of—35 Vict. cap. 12.

One of two partners assigned to the plaintiff a debt for goods sold to the defendant by a deed professing to transfer his partner's interest as well as his own. It appeared that he had a general power to transact the business of the firm, and that his partner afterwards ratified the sale.

Held, (Burton, Patterson, Moss, JJ.A., and Galt, J.,) that the plaintiff was entitled to recover under 35 Vict. cap. 12 as the assignment was within the scope of the partnership business, and covered by the agency of one partner for the other; and that even in the absence of authority, his partner's subsequent ratification was sufficient.

Held, also, that the fact that the contract was by deed did not deprive it of the effect of a simple contract.

Bethune, Q.C., for the appellant.

Robinson, Q.C., for the respondent.

Appeal allowed.

LA BANQUE NATIONALE v. SPARKS.

From C. P.] [Sept. 15.

Promissory note—Stamps—31 Vict. cap. 9, sec. 4, D.

On the 9th September, 1875, defendant endorsed a promissory note made by S. & C., bearing that date and payable to him four months after date at the plaintiffs' branch at Ottawa. On the same day C. deposited it with the plaintiffs, authorising them to fill it in for the amount of S. & C.'s then due paper, as also other paper falling due before the 22nd October. On the 21st October, the plaintiffs filled in the note for the amount due, and affixed stamps sufficient to cover double duty which were obliterated by writing across them the date on which they were so affixed, namely, 21st October.

Held, (Burton, Patterson, JJ.A., Harrison, C.J., and Moss, J.A.,) that the stamps were not properly cancelled; for if affixed as agents of the maker then, under sec. 4 of 31 Vict. cap. 9, D., the date of the obliteration must accord with that of the note; and if the plaintiffs acted as a subsequent holder, then under sec. 12, as substituted by 37 Vict. cap. 47, sec. 2, the initials or name as well as the date are required.

Snelling for the appellant.

M. C. Cameron, Q.C., for the respondents.

Appeal dismissed.