

sage of one of the defendants' trains, hauled by two engines up a heavy grade. It was proved that the wind at the time would have carried any sparks from the locomotives directly towards the premises and that it is usual for engines, under such circumstances, although well and properly equipped, to throw off sparks and cinders. The evidence also satisfied the judge that it was in a high degree improbable that the fire could have been caused in any other way, although no negligence in the operation of the train was shewn and no one saw any sparks alight.

Held, that there should be a finding that the fire was caused by sparks from the engines and that the plaintiffs were entitled to a verdict under s. 298, R.S.C. 1906, c. 37.

Tate v. C. P. R., 16 M.R. 391, followed.

Affleck and Fillmow, for plaintiffs. *Clark, K.C.*, for defendants.

Prendergast, J.]

[Sept. 6.

NORTH-WEST THRESHER CO. v. BOURDIN.

Fraudulent conveyance—Purchase of land from provincial government—Lien on land created by purchaser—Subsequent transfer of purchaser's interest to third party.

The defendant Bourdin purchased the land in question from the government of Manitoba in May, 1904, paying \$64 on account and agreeing to pay the balance in yearly instalments. In January, 1905, he created a lien on the land in favour of the plaintiffs, who registered it. He made no further payments to the government, but put improvements on the land estimated at \$100. He gave a quit claim deed of it in August, 1906, to the defendant, Le Seach. The Land Department ignored the lien of the plaintiffs and, upon Le Seach paying the balance of the purchase money, issued a patent for the land to him.

Held, that it should be inferred from these facts that the government had treated Bourdin's interest in the land as forfeited because of his default in payment and had intentionally set aside the plaintiffs' registered lien, and that the patent to Le Seach could not be set aside for improvidence or on any other ground.

Kilgour, for plaintiffs. *Bowman*, for defendants.