

The Legal News.

VOL. II. MARCH 22, 1879. No. 12.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, March 20, 1879.

SALVAS V. THE NEW CITY GAS COMPANY.

Contributory Negligence—Accident to horse running without a driver—Responsibility for negligence of Agents.

JOHNSON, J. Action for damages for the destruction of a horse that fell into a pit made under the defendant's authority. The plea is 1st, that the defendants agreed with one Parker to do the work which made this opening necessary, and therefore they are not responsible. That might give them a recourse against Parker to indemnify them; but the public have nothing to do with Mr. Parker; they only know the Gas Co., and cannot even know the names of their servants or agents who do their digging for them, on whatever terms they may do it. Then the second plea is that every precaution was used, and there was no negligence except on the part of plaintiff himself. The facts, as deposed to by the plaintiff's witnesses, are that the horse was found harnessed to the carriage, and having fallen into this ditch about 6 a.m.; that there was no light, and no watchman, at the time, and when there was one, he was always drunk. The defendants' witnesses, however, contradict this. A man named Arcand appears to have been in charge of this horse on the night of the accident, and I gather from the evidence that the animal must have escaped from Arcand and run away, probably in the direction of its stable, which was near the spot. The poor creature was terribly injured; but for all that appears in evidence it must have been without a driver at the time. There is no evidence to make the defendants liable. Their negligence even as to watchmen and lights, supposing all that to be true, would not make them liable for accidents happening to horses

running about the town without drivers. The action will be dismissed, but without costs.

Duhamel & Co. for plaintiff.

Lacoste & Co. for defendant.

COURT OF QUEEN'S BENCH.

MONTREAL, March 22, 1879.

Sir A. A. DORION, C.J., MONK, RAMSAY, TESSIER & CROSS, JJ.

RENNY et al. (contestants in the Court below), appellants; and MOAT (claimant below), respondent.

Subrogation—C. C. 1155, 1156.

CROSS, J. (*dis.*). On the 20th March, 1871, W. P. Bartley subscribed an obligation in favor of Robt. Hamilton for \$20,000, payable in five years, with interest at 7 per cent. per annum, payable half-yearly, and hypothecated certain real estate in security, Messrs. Mulholland & Baker also becoming security for the amount. Mr. Hamilton only paid part of the amount to Bartley, retaining \$9,570.20, which he deposited in the Merchants' Bank to the credit of Bartley subject to Hamilton's approval. Mulholland & Baker made three semi-annual payments of interest on the mortgage amounting to \$2,100. On the 17th March, 1876, the amount of the obligation in capital and interest was settled by Mulholland & Baker giving their check for \$9,087, and by Bartley giving his check on the Merchants' Bank for \$11,613.07, the fund there deposited by Hamilton to the credit of Bartley which had increased to that amount by the addition of interest. This check was drawn to the order of Jackson Rae, Mr. Hamilton's agent, and the money withdrawn on his endorsement. Mulholland & Baker had borrowed from Robert Moat the \$9,087 which they paid to Hamilton, and the 13th July, 1876, they became indebted to Moat for another sum of \$15,000 borrowed on the 17th March, 1876, to pay Hamilton, and for which they gave their promissory note payable in 12 months. In order to secure Moat for his advances, a deed was executed 23rd June, 1877, 15 months after Hamilton had been paid in the manner already mentioned, the parties being, 1st. Robert Hamilton; 2nd. Mulholland & Baker; and 3rd. Robert Moat. The deed was prefaced by the recital of the execution of the