goring, etc., unless he knows that the particular animal has a mischievous propensity toward the kind of act which caused the damage: Halsbury's Laws of England, vol. 1, p. 372; Buxendin v. Sharp (1695), 2 Salk. 662; Corby v. Foster (1913), 29 O.L.R. 83, 95; and other cases.

The learned Judge was of opinion that there was not a tittle of evidence to shew scienter on the part of the defendant. Assuming that the bull did try to get at the witness Garrett to attack him, no notice of the crossness of the bull was brought home to the defendant.

Questions 1 and 2 put to the jury and their answers were as follow: "(1) Was the bull . . . of a vicious or ferocious disposition? A. Yes. (2) If so, was the defendant aware of such disposition? A. Yes. We believe an experienced farmer, as the defendant is, should have known that any bull over two years of age is dangerous or liable to become so, especially to strangers. We think the bull should have been dehorned when one year old and should have had a chain affixed to its nose when running at large."

This was an attempt by the jury to impose upon the defendant a duty unknown to the law.

The appeal should be allowed and the action dismissed.

MASTEN, J., concurred.

The Court being divided, the appeal was dismissed with costs, qualified as stated by the Chief Justice (RIDDELL, J., dissenting as to costs).

SECOND DIVISIONAL COURT. MARCH 17TH, 1916.

UNION BANK OF CANADA v. MAKEPEACE.

Guaranty—Action on—Defence—Fraud—Evidence—Finding of Fact of Trial Judge—Appeal—Amount due upon Guaranty—Reference—Costs.

Appeal by the defendant from the judgment of MIDDLETON, J., 9 O.W.N. 202.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

W. S. MacBrayne, for the appellant.

D. C. Ross, for the plaintiffs, respondents.

MEREDITH, C.J.C.P., read a judgment in which he said that the defendant failed, upon the evidence, in her defence of non