

such right the railway company were not liable as carriers, the transitus having come to an end at Swansea by refusal of the company to receive the iron. The Court of Appeal, while relieving the railway company from liability as carriers, held them liable as warehousemen, and ordered a reference to ascertain the damages on that head.

Held, reversing such decision, MILLS, J., dissenting, that as the action was not brought against the railway company as warehousemen, and as they could only be liable as such for gross negligence, and the question of negligence had never been raised nor tried, the action must be dismissed in toto with reservation of the right of F. Bros. to bring a further action should they see fit. Appeal allowed with costs.

W. Nesbitt, K.C., for appellants, *Shepley*, K.C., and *Baird*, for respondents.

N. S.]

McDONALD v. McDONALD.

[Feb. 17.

Donatio mortis causa--Deposit receipts--Cheques and orders--Delivery for beneficiaries--Corroboration--Construction of statute.

McD. being ill and not expecting to recover, requested his wife, his brother being present at the time, to get from his trunk a bank deposit receipt for \$6,000, which he then handed to his brother, telling him that he wanted the money equally divided among his wife, brother and a sister. The brother then, on his own suggestion or that of McD., drew out three cheques or orders for \$2,000 each, payable out of the deposit receipt, to the respective beneficiaries, which McD. signed and returned to his brother who handed to McD.'s wife the one payable to her and the receipt, and she placed them in the trunk from which she had taken the receipt. McD. died eight days afterwards.

Held, affirming the judgment appealed against (35 N.S. Rep. 205), SEDGEWICK and ARMOUR, JJ., dissenting, that this was a valid *donatio mortis causa* of the deposit receipt and the sum it represented, notwithstanding there was a small amount for interest not specified in the gift.

By R.S.N.S. (1900) c. 163, sec. 35, an interested party in an action against the estate of a deceased person cannot succeed on the evidence of himself or his wife, or both, unless it is corroborated by other material evidence.

Held, that such evidence may be corroborated by circumstances or fair inferences from facts proved. The evidence of an additional witness is not essential. Appeal dismissed with costs.

W. B. A. Ritchie, K.C., for appellants. *Russell*, K.C., and *Harris*, K.C., for respondents.