

Sup. Ct.]

NOTES OF CANADIAN CASES.

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**NOTES OF CANADIAN CASES.**PUBLISHED IN ADVANCE BY ORDER OF THE  
LAW SOCIETY.**SUPREME COURT.**

Ontario.]

[June.

CANADA SOUTHERN RAILWAY CO. V.

PHELPS.

*Railway Company—Negligence—Damages—Fire  
communicated from premises of the company.*

This was an action commenced by the respondent against the appellants for negligence on the part of the appellants in causing the destruction of the respondent's house and out-buildings by fire from one of their locomotives. The freight shed of the company was first ignited by sparks from one of the Co.'s engines passing Chippawa station, and the fire extended to respondent's premises. The following questions, *inter alia*, were submitted to the jury, and the following answers given:—

Q.—Was the fire occasioned by sparks from the locomotive?

A.—Yes.

Q.—If so, was it caused by any want of care on the part of the company or its servants, which, under the circumstances, ought to have been exercised?

A.—Yes.

Q.—If so, state in what respect you think greater care ought to have been exercised?

A.—As it was a special train and on Sundays, when employees were not on duty, there should have been an extra hand on duty.

Q.—Was the smoke stack furnished with as good apparatus for arresting sparks as was consistent with the efficient working of the engine? If you think the apparatus was defective, was it by reason of its not being of the best kind, or because it was out of order?

A.—Out of order.

Verdict for plaintiff, \$800.

On motion to set aside verdict, the Queen's Bench Division unanimously sustained the verdict.

On appeal to the Supreme Court.

*Held*, affirming the judgment of the Court below, that the questions were proper questions to the jury, and that there was sufficient evidence of negligence on the part of the appellants' servants to sustain the finding.

If a railway company are guilty of default in the discharge of the duty of running their locomotives in a proper and reasonable manner, they are responsible for all damage which is the natural consequence of such default, whether such damage is occasioned by fire escaping from the engine coming directly in contact with and consuming the property of third persons, or is caused to the property of such third persons by fire communicating thereto from property of the railway company themselves, which had been ignited by fire escaping from the engine coming directly in contact therewith.

*H. Cameron, Q.C., and Kingsmill, for appellants.*

*Bethune, Q.C., for respondent.*

**BADENACH V. SLATER.**

*Trust deed for benefit of creditors—Power to sell on credit—Not fraudulent preference.*

In a deed of assignment for the benefit of creditors the following clause was inserted: "And it is hereby declared and agreed that the party of the third part, his heirs, etc., shall, as soon as conveniently may, collect and get in all outstanding credits, etc., and sell the said real and personal property, hereby assigned, by auction or private contract, as a whole or in portions, for cash or on credit, and generally on such terms and in such manner as he shall deem best or suitable, having regard to the object of these presents." *B. et al.*, who were execution creditors of the assignors, attacked the validity of the assignment to S. No fraudulent intention of defeating or delaying creditors was shown.

*Held* (affirming the judgment of the Court below), that the fact of the deed authorizing a sale upon credit did not, *per se*, invalidate it, and the deed could not on that account be impeached as a fraudulent preference of creditors within the Act R. S. O., cap. 118.

Appeal dismissed with costs.

*Gibbons, for appellant.*

*Foster, for respondent.*