

Mr. Justice Maclennan answers the question, Was the sickness so remotely connected with the wrongful act that in point of law it was not recoverable? by saying, "I think we cannot say it was a remote and uncertain accidental result, and not the direct and immediate consequence of the wrongful act."

Mr. Justice Osler concurred, but the Chief Justice, in one of his characteristically vigorous judgments dissents on the ground that *MacMahon v. Field*, supra, does not overrule the *Hobbs Case*, but in principle affirms it. He admits that there is something said in the latter case disparagingly of the former case. But the facts appear to be essentially different. They were as follows :

"The plaintiff contracted with the defendant for stabling. When the horses arrived at night and were put into their stable they were wrongfully turned out without their clothing by a third person who had also bargained for stabling for his horses, and such turning out was apparently with the sanction and assistance of the defendants. Before fresh stabling could be procured the horses had to stand there, being exposed in the night air, and some of them caught cold and depreciated in value." It was held that the plaintiff could recover for the injury to his property, besides the general damage for the breach of contract. He then points out: "The injury to chattels by exposure to wet, storm or frost, arising from a breach of contract providing for their due protection therefrom, seems to me a very clear cause of action, involving no such considerations as weighed with the Court of Queen's Bench in *Hobbs Case*."

The weakness of the learned Chief Justice's judgment is, it is submitted, in the fact that he does not discuss the difference pointed out by the judges in the Court below between actions for breach of contract and tort.

There is no question that so far at least as the judgment of Blackburn, J., in the *Hobbs Case* lays down the principle "that the question of remoteness ought never to be left to a jury, *MacMahon v. Field* distinctly overrules it." This proposition renders the two cases hopelessly irreconcilable.