

Q. B. Div.]

NOTES OF CANADIAN CASES.

[Com. Pleas Div.]

municipality on the subject, and that the constables were liable in replevin for impounding them; but that replevin would not lie against the poundkeeper.

Held, also, that the constables were not entitled to notice of action (*per* O'CONNOR, J.), because even though they were, as such, public officers to distrain and impound the sheep even if they were "running at large" contrary to the by-law, they were merely "other" persons who under the by-law were empowered to take and deliver to the poundkeeper.

Per WILSON, C.J.—They were not entitled to notice unless some facts existed which might give rise to an honest belief that the sheep were at large, and that such a state of things existed, when if they had in fact existed would have justified them in impounding the sheep, but that such a state of facts did not exist under the evidence in this case.

HILLYARD V. GRAND TRUNK RAILWAY CO.

Railways—Railway Cos.—Barbed wire fence—Injury therefrom—Non-liability for rejection of evidence.

Held, that 46 Vict. ch. 18, sec. 490, subs. 15, 16, seemed to sanction a barb wire fence and empower municipalities to provide against injury resulting from them. Such a fence constructed by the defendants upon an ordinary country road along the line of their railway could not be treated as a nuisance, no by-law of the locality in which the accident complained of in this case having been passed respecting fences of the kind; and that the defendants were not, therefore, liable for the loss of the plaintiff's colt, which while following its dam, as the latter was being led by the plaintiff's servant, ran against the fence and received injuries resulting in its death.

But, *held*, that if the doorways of shops and the boundaries of private residences, churches, and other buildings on the sidewalks of thoroughfares, and perhaps on all sidewalks, were so fenced such fencing would be a nuisance.

Held, also, that the colt in question, five weeks old following its dam, could not be said to be running at large, the universal custom of the country which ought to govern being for colts thus to follow the dam.

Semble, that if a top rail or capping would

enable a fence of the kind to be better seen by men or animals it should be used.

Held, also, that evidence of the common use of fences of the kind in other townships, etc., should not have been rejected as showing that they were not considered dangerous or a nuisance.

COMMON PLEAS DIVISION.

Divisional Court.]

[June 27.]

GLASS V. CAMERON.

Judgment—Amendment—Setting aside at instance of third party—Locus standi.

An order was made by the Master in Chambers changing a judgment and execution against C. as executor into a judgment against him personally. The amendment was made *nunc pro tunc*; and because it was understood that it was at the desire and consent of all parties interested, it being stated that an execution issued by the M. Co. against C. personally had expired. It appeared, however, that the M. Co.'s writ had not expired, but was in full force, and that the effect of the above amendment was to cut it out. On these facts being brought to the notice of the Master on an application made by the M. Co., he made an order setting aside his previous order directing the amendment to be made.

Held, CAMERON, C.J., dissenting, that the M. Co., though strangers to the suit in which the amendment was made, had a *locus standi* to interfere to have the order directing the amendment set aside.

Osler, Q.C., for the appeal.

S. Richards, Q.C., contra.

GARLAND V. THOMPSON.

Promissory note—Sale of land—Fraud—Evidence—New trial.

To an action on a promissory note the defendant counter-claimed, setting up that the note was given in part payment of the purchase money of some land in Manitoba, which, he alleged, the plaintiff induced him to purchase by his fraud and misrepresentation as to its value and location. The jury found that the