

Held, however, that that case was distinguishable, as it was decided on the special provisions of the Insolvent Act of 1875 which were quite different from those of the Assignments Act, also on the ground that under the latter Act a debtor cannot get a discharge without payment of all claims in full, whereas he might under the former.

Robson, for plaintiffs. *Hoskin*, for defendant.

Dubuc, C.J.]

[April 24, 1903.]

SCHELLENBURG v. CANADIAN PACIFIC RY. CO.

Railways—Obligation to fence.

The meaning of the words "not improved or settled, and inclosed" in sub-s. 3 of s. 199, of the Railway Act, 1903 (D.) describing lands on either side of the railway which a railway company is not required to fence off, came again under consideration in this case. The chief justice held that the plain meaning was the same as if the words were, "not improved and inclosed, or not settled and inclosed," so that if the lands are not inclosed, there is no obligation to fence, though they may be both improved and settled or occupied.

Dreger v. Canadian Northern Ry. Co., 15 M.R. 386, 41 C.L.J. 341, not followed.

Lemon, for plaintiff. *Bond*, for defendants.

Perdue, J.]

McKENZIE v. McMULLEN.

[April 25.]

Evidence—Proof of verbal agreement collateral to written contract—Warranty—Representation on condition, when treated as ground for rescission, and when as warranty only.

To an action by the plaintiffs on a lien note or agreement whereby the defendants promised to pay the plaintiffs \$465 and interest and acknowledged that it was given for a pair of horses and agreed that the title, ownership and right of possession of the horses should remain in the plaintiffs until the note should be paid, with power to retake possession and sell on default of payment or on the happening of other events mentioned, the defendants pleaded that the horses had been sold to them with a verbal warranty that they were young and sound and free from