below, that the plea of *res judicata* was not available.

2. That the words "in trust" import an interest in somebody else, and that the evidence clearly establishes that the present appellant as curator to the substitution is the owner of the corpus of the shares in question.

Sweeny v. *Bank of Montreal* (12 App. Cas. 617) followed.

Appeal allowed with costs.

Laflamme, Q.C., for Appellants.
H. Abbott, Q.C., for Respondent.

Quebec.]

DANSEREAU v. BELLEMARE.

Patent— Carriage-tops — Combination of elements—Novelty.

In an action for damages for the infringement of a patent called "Dansereau's Carriage Tops," consisting in the combination of a carriage-top made in folding sections as described in the specifications with posts arranged to turn down, the defendant (D.) present appellant, pleaded *inter alia* that there was no novelty, and that the invention was well-known and had been in use for a considerable time. At the trial, after considerable evidence had been given for both parties, the Judge appointed two experts to examine and compare the carriage tops of four carriages made by D., and alleged by B. to be infringements on his patent, and also to examine the carriage top of one carriage in the possession of one C.A.D. alleged to be made on the same principle as B's invention, and to have been in use long prior to B's patent. One of the experts, a solicitor of patents, reported in favour of B's invention, showing the difference between B's carriage and C.A.D. and in what consists the improvement. The other, a carriage maker, reported that B's carriage was an improvement on C.A.D's carriage, but both agreed that D's carriages were infringements of B's patent. The judge awarded respondent $100 damages and enjoined D. not to manufacture or sell carriages in infringement of B's patent.

On appeal to the Court of Queen's Bench (appeal side) that Court held that the patent for the infringement of which the respondent seeks by his action to recover damages from D. discloses no new patentable invention or discovery.

On appeal to the Supreme Court of Canada it was

Held, reversing the judgment of the court below,—Ritchie, C.J., and Gwynne, J., dissenting, that the combination was not previously in use and was a patentable invention.

Appeal allowed with costs.

Geoffrion, Q.C., for Appellant.
St. Pierre, Q.C., for Respondent.

Quebec.]

GILBERT v. GILMAN.

Appeal—Payments by instalments—Rights in future—Supreme and Exchequer Courts Act, Sec. 29, Seb-sec. "b."

A judgment of the Court of Queen's Bench for Lower Canada (appeal side) in an action for $1339.36, being for the balance of one of the money payments which the defendant was to pay to the plaintiff every year so long as certain security given by the plaintiff for the defendant remained in the hands of the government, is not appealable. The words "where the rights in future might be bound" in sub-section "*b*" of section 29 of the Supreme and Exchequer Courts Act, relate only to "such like matters" as are previously mentioned in said sub-section.

Appeal quashed with costs.

C. Robinson, Q.C., *Archibald, Q.C.* } for Appellants.
Irvine, Q.C., for Respondent.

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*COURT OF QUEEN'S BENCH— MONTREAL.**

Pleading—Evidence—Art. 144, C.C.P.

To an action to recover the value of a mare killed on the defendants' line, the defendants pleaded specially that the fences on either side of their railway were good and sufficient; that there was no negligence; and that they had never been put *en demeure* with regard to their fences being out of order. This was followed by a *défense en fait*. In the course of the *enquête* there was evidence which indicated that the locality where the accident occurred was not on the defendants' railway line, but

* To appear in Montreal Law Reports, 4 Q.B.