

4. *Negligence—Breach of statutory duty—Contributory negligence.*

In order that a railway company may be held responsible in damages for its negligent omission to perform a statutory duty, it must appear that the injury was the result of such omission and not of the folly or recklessness of the injured person; but the fact that the negligence of the plaintiff contributed to or formed a material part of the cause of his injury, will not preclude him from recovering damages if the consequences of his contributory negligence could have been avoided by the exercise of ordinary care and caution on the part of the defendant.

Dublin, Wicklow and Wexford Railway v. Slattery, 3 A.C. 1155, 1166; and *Davey v. London and South Western R. Co.*, 12 Q.B.D. 70, specially referred to.

Atkin, K.C., and *E. F. Spence*, for appellant company. *Donald Macmaster*, K.C., and *Harold Smith*, for respondents.

Lords Atkinson, Shaw, Parker.]

[13 D.L.R. 702.]

IMPERIAL PAPER MILLS, LTD. v. QUEBEC BANK.

1. *Chattel mortgage—After-acquired property—In esse or in posse—"Excepting logs on the way to the mill," construed.*

Where a mortgage by a wholesale manufacturer stipulates to cover generally all present and future acquired assets "excepting logs on the way to the mill," such exception is not to be construed as limited to logs on the way to the mill at the date of the mortgage, when the reason for the exception is in the interest of all parties (including the mortgagee himself) to facilitate those ordinary and essential financial arrangements between the mortgagor and his bank which are only possible if advances can be made upon logs in transit from time to time during the general and regular course of the trade and contract.

Imperial Paper Mills v. Quebec Bank, 6 D.L.R. 475, 26 O.L.R. 637, affirmed.

2. *Banks—Statutory securities—Bank Act (Can.)—Form, Latitude in.*

A bank may take security for advances from a wholesale manufacturer under sub-secs. 1, 3, 5 and 6 of sec. 88 of the Bank Act (Can.) R.S.C. 1906, ch. 21, provided the goods involved are