coming from watering and going towards the bush, not encumbering the highway or the track by making any unnecessary delay in crossing, which she had a right to do, and was then struck by the locomotive which was going at its usual fast rate without lessening or slacking its speed so as to avoid injury to the mare or anything there that might be lawfully passing or repassing, and that, under the evidence, was such negligence as made the defendants liable for damages.

And on the second Count, That the defendants were bound to fence on the whole line of their route, including the highway on each side of the railway, fencing the highway in such a manner as to leave proper openings with gates so as to let cattle, carriages, &c., of the public pass with as little inconvenience as possible. And if the highway at this point, as was proved, was not so fenced, or secured with proper gates and conveniences, and the mare got and was on the highway and railway, there crossing each other for want of them, when struck and killed. That as to the defendants, she was lawfully there, and the defendants were liable for the damage caused by their negligence in not fencing and in not taking the ordinary proper and necessary precautions to prevent the accident by lessening speed in time at this point, not having there erected and maintained the fences at this point with the proper conveniences. That the bye-laws only showed that the mare might be at large, unless she was breachy, which latter was not shown. That the absence of these bye-laws would not affect the situation of the parties in the present instance materially. That both species of negligence were proved, as mentioned in this case, in the first and second Counts.

That as to the damages, they had evidence of value, from $60 and $80 to $100, which was a sufficient guide in that respect, and that it did not seem necessary to give vindictive damages over and above what they thought a fair valuation, but moderate damages for the loss might be given.

The Jury found for the plaintiff generally, on both counts, for negligence and for want of fencing to £25.

Mr. Albert Prince moved to set aside the verdict, and for a new trial on the ground that it was contrary to law and evidence, and for misdirection, and for excessive damages.

Mr. J. O'Connor shewed cause.

The new trial moved for was refused, the Judge being of opinion that the verdict as to the amount was warranted by the evidence of value elicited on the trial under the direction of the Judge, who thinks the Jury exercised a just discretion under all the circumstances, and does not consider the damages excessive, and that there was no misdirection for the reasons and under the authorities both in England and Upper Canada cited in Renaud v. The G.W.R.W. Co., 12 U. C. R. 408, (on appeal from this Court), and in Parnell v. G.W. R.W. Co., 4 C. P. R. 517, (this last, not reported at time of trial), at great length, in both of which cases the questions were very fully considered, and where all the available authorities have been most fully set forth, and therefore that the verdict was not contrary to law and evidence.

Rule discharged.

MONTHLY REPERTORY.

Notes of English Cases.

COMMON LAW.

H. of L. WRIGHT *v.* SCOTT. *July* 16.

Statute—Construction—power to erect Public Works.

Where a Statute authorizes a Company to construct certain works, as a harbour, it is to be presumed they have power to execute all works incidental to their main purposes, and which they deem necessary, provided they act *bonâ fide*.

Certain public trustees for improving the navigation of the Clyde were authorized by Statute to acquire lands adjoining the river, and to construct a quay or harbour, and having acquired part of W.'s lands, proposed to erect a large goods shed fronting the river, and between the river and the rest of W.'s land.

Held, though the Statute gave no express power to erect sheds, it must be presumed that a harbour equipped with all the most approved appliances for trade, was intended by the Legislature, and that, therefore, a power to erect sheds was implied.

EX. CROFT *v.* VIVIAN. *Nov.* 20.

Declaration—Contract—sale of Shares—Variance.

The declaration alleged a contract for the sale of Shares by the plaintiff to the defendant. At the trial it appeared that the defendant had employed the plaintiff as a broker to purchase the shares on commission.

Held, that the evidence did not support the contract in the declaration.

EX. EBLIN *v.* NEWSOME. *Nov.* 25.

Costs—Practice—claiming too much in Rule.

Semble, if the party claim in a rule, the costs of the application in a case where he is not entitled to them, and the other side show cause simply on account of such claim of costs, the rule, as to so much of it, will be discharged with costs.

B.C. IN THE MATTER OF JOHNSON, (AN ATTORNEY). *Nov.* 26.

Practice—order for taxation—setting aside—costs of arbitration—Attorney's bill.

Where, at the instance of an Attorney, an order is made for the taxation of his bill, the client not appearing to oppose the summons, the latter is concluded from objecting subsequently that the items of the bill are not taxable.

Rule to set aside such order, upon the ground that the items were not taxable, refused.

Q.B. WEBB *v.* CLARKE. *Nov.* 24, 26.

Award—agreement to cultivate, evidence of—Damages to successive reversioners.

Where, to a declaration on an agreement for not cultivating according to the custom of the country, the defendant only pleaded Not Guilty, proof that the tenancy was from year to year, is sufficient evidence of the agreement.

Where three actions were referred to an arbitrator, the defendant being the same in each, and the plaintiffs being successive reversioners under the same title.

Held, that the arbitrator was right in awarding damages to each reversioner.

C.P. GODTS *v.* ROSE. *Nov.* 22.

Vendor and purchaser—property passing—sold note—delivery on payment—acceptance.

The plaintiff entered into a contract to sell to the defendant five tons (unascertained) of oil. The next day the plaintiff went to H.'s wharf, where the plaintiff had some oil, and requested H.'s clerk to transfer oil, entered in H.'s book, from the name of the plaintiff to that of the defendant, which was done, and the plaintiff received from H.'s clerk an instrument in writing, addressed to the defendant, acknowledging that in the name of H., that he held the oil as agent for the defendant. On the afternoon of the same day, a clerk of the plaintiff called