d'un tiers, celui qui a gagné a un droit d'action contre le tiers pour s'en faire remettre le montant, ce dépôt étant assimilé à un paiement; C. C. 1927.—*Riendeau* v. *Blondin*, Rainville, J., 12 novembre 1880.

Succession vacante — Insolvabilité — Légataires universels et particuliers—Réduction de legs—Renonciation—Droits des curateurs.

JUGÉ:—1o. Que tous les biens d'une succession insolvable ne sont pas le gage des créanciers de préférence aux légataires particuliers, de manière à ce qu'ils puissent empêcher ces derniers de prendre possession de leurs legs; s'il doit y avoir réduction des legs particuliers pour payer les dettes du testateur, les créanciers ont une action contre les légataires à ce titre pour obtenir cette réduction, mais il ne peuvent faire mettre au nom d'un curateur nommé à la succession insolvable tous les biens du testateur.

2o. Que la renonciation d'un légataire universel unique ne rend pas la succession vacante s'il reste d'autres héritiers au testateur.

3o. Qu'un curateur nommé à une succession vacante par la renonciation des légataires ou héritiers n'a que les droits qu'auraient eu ces légataires ou héritiers.—*La Banque Ville-Marie* v. *Rocher*, En Révision, Johnson, Torrance, Loranger, JJ., 30 avril 1885.

Inscription en Révision—Contestation d'élection municipale—Appel.

JUGÉ:—Qu'un jugement final rendu par la Cour Supérieure sur une requête en contestation d'élection municipale ne peut être inscrit en Révision, ce jugement n'étant pas susceptible d'appel; et une inscription ainsi faite en Révision sera rejetée sur motion.—*Beauchemin* v. *Hus*, en Révision, Doherty, Loranger, Cimon, JJ., 30 mai 1885.

Bail—Réparations—Dommages—Résiliation.

JUGÉ:—Qu'un propriétaire qui, en faisant des réparations à sa maison, emploie des matériaux émanant des odeurs infectes, lesquelles causent des dommages à son locataire, sera condamné à payer le montant de ces dommages en sus de la résiliation du bail.—*Levesque* v. *Daigneault*, En révision, Sicotte, Gill, Loranger, JJ., 30 mai 1885.

QUEEN'S BENCH DIVISION.

TORONTO, Feb. 9, 1885.

Before WILSON, C.J., ARMOUR, J., O'CONNOR, J.

CONWAY v. CANADIAN PACIFIC RAILWAY CO.

Railways and Railway Companies, 42 *Vict., ch.* 9, 46 *Vict., ch.* 24 (*D*)—*Liability to fence.*

[Continued from page 328.]

On the other hand, it was no more trouble or expense to the company to fence in the one case than in the other: but their doing so as regards occupants under such circumstances would be an encouragement to actual settlement.

Under these circumstances the Amending Act of 1883 was passed, I think, in all probability, for the protection of people situated, in respect to occupancy, as the plaintiffs were.

It is immaterial whether different parts of the lot were occupied by several persons or not.

If a village had been formed at the place in question of such occupants, it could make no difference, except to increase the necessity for fencing, if there was an increase of cattle.

That the plaintiffs entered the house which they occupied as the tenants of and paid rent to Worthington, could make no difference. Whether his tenants or not they were in occupation. However, Worthington, as appears by the evidence, abandoned the house when his contract was completed, and after November, 1883, the plaintiffs continued in possession independently, cultivated a small portion of the land, used another part for pasture, made an effort to obtain title, as recognized settlers, from the Crown Lands Department, and were awaiting an answer, expected to be favorable to their application, when the horses were killed.

The term "occupied," as used in this clause, must be construed in its ordinary grammatical meaning; in that meaning which naturally and obviously belongs to it, and has been given to it in common language.

It is not a technical term, but one of the common understanding of mankind, and as such in common use; Wilberforce on Statute Law, p. 122; Hardcastle, pp. 26, 27, 74.

As to what occupancy is,—"Occupancy is the thing by which title was in fact originally gained; every man seizing to his own contin-