possible to suppose that he could have been precipitated twenty feet if the horse was going at a walk.

The judgment is as follows:—

"Considering that on the 25th day of June, 1881, the appellants were not in default or in the wrong as regards the quality or pattern of the iron rails they had used in the construction of their railway at the south-western corner of the Place d'Armes, where the said railway makes a curve in departing from the line of Notre Dame Street, and turns in the direction of the St. James street at right angles from Notre Dame Street, but that said rails, as well as that part of the roadway which the appellants were bound to maintain, were lawful and sufficient;

"And considering that it was not by any fault, omission or neglect on the part of the appellants, that on the said 25th of June, 1881, the respondent was thrown out of the waggon in which he was being driven while crossing the track of the said railway at the said curve, whereby he sustained the injuries for which he seeks to recover damages in this cause;

"And considering that the driver of the said waggon, while so crossing the said track at the time and place aforesaid, failed to exercise the necessary caution and prudence, to which he was bound on the occasion in question, and might by the exercise of reasonable caution and prudence have avoided the accident by which the respondent was so injured;

"Considering that there is error in the judgment rendered in this cause by the Superior Court at Montreal on the 28th June, 1882, the Court, etc., doth reverse, etc., the said judgment, and proceeding to render the judgment which ought to have been rendered, doth dismiss the action of the respondent with costs," etc.

Judgment reversed.*

Abbott, Tait & Abbotts for appellants.

Lacoste, Q.C., counsel.

Lanctot for the respondent.

DeLorimier, Q.C., and *Geoffrion*, counsel.

* In the case of the same Company, appellant, and The Montreal Brewing Company, respondent (an action for damages to the vehicle), a similar judgment was rendered.

SUPERIOR COURT.

MONTREAL, May 31, 1884.

Before TORRANCE, J.

SURPRENANT v. GOBEILLE.

Libel—Privileged Communication.

A report made by a foreman in the course of his duty, and without malice, respecting men in his gang, which caused the men to be discharged, is a privileged communication.

This was an action of damages by a man dismissed from the service of the Canadian Pacific Railway Company, on the report of the foreman over him. The plaintiff complained that the report was false and malicious.

The report bore date the 2nd August, 1883, in these words: "I have four men in my gang that I do not want any longer; if you want them anywhere please let me know and I will send them to you—or give me permission to discharge them. They are: F. Suprenant, one of the regular section men: him it is for trying to make trouble with the men while on duty, and the others E. Darbin, L. Darbin, and F. Gravel, for backing him up." In consequence of this report, the plaintiff was discharged.

PER CURIAM. The facts show that the defendant made his report in the course of his duty, and without malice; and, moreover, with reason. The report was a privileged communication. *Lawless* v. *Anglo-Egyptian Cotton Co.*; A.D. 1869, 4 L. R. Queen's Bench, 262; *Dewe* v. *Waterbury*, 6 Supreme Court R. 143, A.D. 1881.

Plea maintained and action dismissed.

H. Lanctot for plaintiff.

H. Abbott for defendant.

PRIVY COUNCIL.

LONDON, April 7, 1884.

Before LORD BLACKBURN, SIR BARNES PEACOCK, SIR ROBERT COLLIER, SIR RICHARD COUCH, SIR ARTHUR HOBHOUSE.

CALDWELL, appellant, and MCLAREN, respondent.

Stream floatable in part—C. S. U. C., cap. 48—Right of using improvements.

The intention of the legislature in enacting C. S. U. C., cap. 48, sec. 15, (12 Vict. cap. 87, sec. 5), was to give to owners of higher