

*Allan v. Pratt* (13 App. Cas. 780) and *Monette v. Lefebvre* (16 Can. S. C. R. 387) referred to.

Appeal quashed without costs.

*Quimet, Q. C., & Emard*, for motion.

*Fleming, Q. C., & Germain*, contra.

6 May, 1896.

Quebec.]

MONTREAL GAS CO. v. LAURENT.

*Negligence—Obstruction of street—Assessment of damages—Questions of fact—Action of warranty.*

Where there is evidence to support it, a judgment assessing actual present damages sustained through injuries will not be interfered with upon an appeal to the Supreme Court.

In cases of *délit* or *quasi-délit* a warrantee may before condemnation take proceedings *en garantie*, and the warrantor cannot object to being called into the principal action as a defendant *en garantie*. *Archibald v. Delisle* (25 Can. S. C. R. 1) followed.

Appeal dismissed with costs.

*Bisaillon, Q. C.*, for appellant, Montreal Gas Company.

*Madore* for appellant and respondent, City of St. Henri.

*Geoffrion, Q. C.*, and *D'Amour*, for respondent, Laurent.

Nova Scotia.]

18 May, 1896.

FRASER v. FRASER.

*Will—Devise to two sons—Devise over of one's share—Condition—Context—Codicil.*

A testator devised property equally to his two sons with a provision that "in the event of the death of my said son T. C. unmarried or without leaving issue" his interest should go to the other. By a codicil a third son was given an equal interest with his brothers in the property on a condition which was not complied with, and the devise to him became of no effect.

*Held*, reversing the decision of the Supreme Court of Nova Scotia, that the codicil did not affect the construction to be put on the devise in the will; that the two sons named in the will