

Held, that this was sufficient to make out a *prima facie* case of negligence, and that the onus of disproving that case and explaining the cause of the runaway lay upon the defendant.

Manzoni v. Douglas, 6, Q.B.D., 145, discussed.

Judgment of the Queen's Bench Division affirmed.

Whiting for the appellants.

Aylesworth for the respondent.

[June 29.

Re THE BOLT AND IRON COMPANY,
LIVINGSTONE'S CASE.

Corporations—Managing director—Remuneration of officer of company—Breach of trust—Set off—Winding-up proceedings—Jurisdiction of Master—Assignment of claim after winding-up order—R.S.C., c. 129, s. 77, ss. 2, secs. 83, 86, 87, 93.

This was an appeal by Livingstone from the judgment of BOYD, C., reported 14 O.R., 211, and came on to be heard before this court (HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A.), on the 16th of March, 1889.

The court dismissed the appeal with costs, unanimously agreeing with and fully adopting the judgment of the learned Chancellor.

Moss, Q.C., for the appellant.

Bain, Q.C., for the respondents.

[June 29.

CONNOR v. MIDDAGH.

HILL v. MIDDAGH AND THE CORPORATION OF STORMONT, DUNDAS AND GLENGARRY.

Municipal corporation—By-law to open road—

Trespass—Necessity of quashing by-law before bringing action—R.S.O., c. 184, s. 338.

A municipal council passed a by-law to open a road in a certain defined course, and by a subsequent by-law appointed the defendant M. a commissioner to remove all obstructions from the highway so defined. M. cut down some trees of the plaintiffs and removed them and portions of fences. Actions of trespass were brought against M. and the council, but the by-laws had not been quashed.

Held, that the road defined in the by-law was the true road and could properly be opened as therein defined.

Held, also (BURTON, J. A., doubting, but not desiring to express a judicial opinion), that whether the road defined in the by-law was the true road or not, and whether, therefore, a trespass was committed or not, the by-laws, being under certain conditions and requirements within the general competence of the council, and not being quashed, afforded a complete defence to the actions.

Judgments of the Queen's Bench Division reversed.

Osler, Q.C., and *J. P. Whitney* for the appellants, the Corporation.

W. M. Douglas for the appellant Middagh.

Robinson, Q.C., and *Aylesworth* for the respondents, the plaintiff in each case.

HIGH COURT OF JUSTICE FOR ONTARIO.

Chancery Division.

BANK OF MONTREAL v. BOWER *et al.*

Will—Devise—"Wish and desire"—Precatory trust—Estate in fee.

A testator by his will made an absolute gift of all his property to his wife, subject to the payment of debts, legacies, funeral and testamentary expenses, and by a subsequent clause provided as follows: "and it is my wish and desire after my decease that my said wife shall make a will dividing the real and personal estate and effects hereby devised and bequeathed to her, among my said children in such manner as she shall deem just and equitable."

Held, that this did not create a precatory trust, and that the wife took the property absolutely.

In *re Adams v. The Kensington Vestry*, 27 Chy.D., 394, and In *re Diggles*, 39 Chy.D., at p. 257. referred to and followed.

McCarthy, Q.C., and *R. G. Code* for the plaintiffs.

Kidd for the defendants.