

The plan of survey of record in and adopted by the Crown Lands Department governs on a question of location of a road when the surveyor's field notes do not conflict with the plan, and no road has been laid out on the ground.

Judgment of the Common Pleas Division reversed.

*McCarthy*, Q.C., and *Pepler*, Q.C., for the appellant.

*Lount*, Q.C., and *Hewson* for the respondent.

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HIGH COURT OF JUSTICE.

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*Chancery Division.*

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Div'l Court.]

[Sept. 16, 1892.

TIFFANY *v.* MCNEE.

METCALF *v.* MCNEE.

*New trial—Jury—Improper conduct towards—Motion for new trial—Time when to be made.*

During the trial of an action for libel, the defendant published in his newspaper a sensational article in reference to the trial. The plaintiff's solicitor was aware that the article had come to the hands of one or more of the jury, but did not bring the matter to the notice of the court, or take any action in respect thereto, and proceeded with the trial to its close. The jury brought in a verdict for the defendant.

Upon a motion to the Divisional Court for a new trial on the ground of improper conduct towards and undue influence upon the jury,

*Held*, that the application was too late.

*Osler*, Q.C., for the action.

*G. T. Blackstock*, *contra*.

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*Common Pleas Division.*

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Div'l Court.]

[Dec. 30, 1893.

CALDWELL *v.* MILLS.

*Master and Servant—Workmen's Compensation Act—R.S.O., c. 141—Negligence—Defect in way—Superintendent—Use of plank for purpose not intended.*

The foreman of the defendant, a contractor for the erection of a building, desiring to pry up a part of the flooring, placed a new plank, about eleven feet long by eight inches wide and three inches thick, which the evidence showed had a knot in it two inches wide, and was cross-grained, across an opening in the ground floor, intending to use it as a fulcrum. The plaintiff, a labourer, carrying a heavy scantling, was directed by the foreman to place it in another part of the building, and, while crossing the plank to do so, was precipitated into the cellar by the breaking of the plank at the knot, and was injured. It did not appear that there was any way beyond the plank.