

to recover, it being shown that the note was intended by the makers to have been made negotiable, and was issued by them as such, but by mistake or inadvertence, it was not expressed to be payable to the order of the payee.

Appeal dismissed with costs.

McCarthy, Q.C., and *Muir*, for the appellants.

Robinson, Q.C., and *E. Martin* for the respondents.

DOWNIE v. THE QUEEN.

Criminal appeal—Indictment for perjury—Evidence of special facts—Admissibility of.

D., in answering *faits et articles*, on the contestation of a *saisie-arrest* or attachment, stated among other things: 1st, That he, D., owed nothing for his board; 2nd, that he, D., from about the beginning of 1880 to toward the end of the year 1881, had paid the board of one Francis, the rent of his room, and furnished him with all the necessaries of life with scarcely any exception; 3rd, that he, Francis, during all that time, 1880 and 1881, had no means of support whatever.

Being charged with perjury, in the assignments of perjury, and in the negative averments, the words used by D., in his answers, were distinctly negatived in the terms in which they were made.

At the trial, evidence was adduced and not objected to at the time by D. to prove that he, Francis, had paid to Downie in May or June, 1880, \$42.00 for having boarded at his house in the month of May, 1880; that he had paid his board to Madam Duperrousel, and a part of his board to Francis Larin, and was held liable by the latter for part of his board during the months of September and October, 1880; that he was also held liable for part of his board at Mrs. Radford's during the months of January, February and March, 1881, and by Britain for having boarded at the Victoria Hotel in the months of April, May, June, July and August, 1881; and also, that he, D., had received from Francis an order on Benjamin Clements for \$15, on account of which Clements had paid him, D., \$7.50 in November 1880.

Held, that under the general terms of the negative averments of the assignment, it was

competent for the prosecution to prove such special facts to establish the falsity of the answers given by D. in his answers on *faits et articles*, and therefore the conviction could not be set aside.

Appeal dismissed with costs.

McCarthy, Q.C., for appellant.

Hall, Q.C., for respondent.

THE CANADIAN PACIFIC RAILWAY v. CHALIFOUX.

Railway companies—As carriers of passengers—Measure of obligation as to latent defects—Arts. 1053-1675—C. C. P. Q.

Held, reversing the judgments of the courts below, that where the breaking of a rail is shown to be due to the severity of the climate and the suddenly great variation of the degrees of temperature, and not to any want of care or skill upon the part of the railway company in the selection, testing, laying and use of such rail, the company is not liable in damages to a passenger injured by the derailment of a train through the breaking of such rail. Fournier, J., dissenting on the ground that as the accident was caused by a latent defect in the rail in use, the company was responsible.

Appeal allowed with costs.

Abbott, Q.C., for appellants.

Geoffrion, Q.C., for respondent.

FORSYTH v. BURY.

Judgment in licitation—Binding on parties to it—Constitutionality of an Act of Incorporation—When its validity can be questioned, and by whom.

The Island of Anticosti held in joint ownership by a number of people, was sold by licitation for \$101,000. The report of distribution allotted to respondent (plaintiff) \$16,578.66 for his share as owner of one-sixth of the island acquired from the Island of Anticosti Company, who had previously acquired one-sixth from Dame C. Langan, widow of H. G. Forsyth.

The respondent's claim was disputed by the appellant, the daughter and legal representative of Dame C. Langan, alleging that the sale by Mrs. C. Langan through her attorney, W.