# NOTES OF CANADIAN CASES.

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## QUEEN'S BENCH DIVISION.

Divisional Court.]

### CANADA LOCOMOTIVE CO. v. COPELAND.

Schooner carrying cargo of coal late in fall of 1883 from Sandusky to Kingston was injured by stress of weather on Lake Erie. The cargo was unloaded to repair the vessel, and the coal could not be delivered till the spring of 1884. The master of the vessel tendered the coal to the consignees at Kingston on arrival of the vessel there, and the consignees refused to accept it, disclaiming all title to it, asserting that the consignors or insurers must assume it. The master also refused to deliver the coal unless upon payment of a larger sum for freight than he was entitled to.

The coal was by consent of parties unladen on the consignees' wharf, they receiving it as wharfingers. It was afterwards sold by consent of parties, and the consignees became the purchasers of it.

*Held*, the shipowners were entitled to charge for unloading, selling and delivering the coal, and to their proper freight charges, although the master had refused to deliver it unless he was paid a higher freight, for the consignees refused, in any case, to accept the coal as consignees or purchasers.

*Osler*, Q.C., for motion.

*Britton*, Q.C., contra.

## COMMON PLEAS DIVISION.

Div. Ct.]

### CLARKSON v. STIRLING.

*Bankruptcy and insolvency—Insolvency—Preference—Evidence.*

On 19th December, 1885, a transfer of certain book debts was made by the firm of B. & W., in pursuance of the terms of a contract entered into therefor on 16th August, 1884, between the firm and defendant, whereby in consideration of defendant lending the firm $15,000, which was to be repaid at any time after six months' notice, with interest in the meantime at 10 per cent., the firm were to employ defendant as a clerk at a salary of $2,000 a year. The firm subsequently made an assignment for the benefit of creditors to the plaintiff, who sought to set aside the contract as giving, or having the effect of giving, the defendants a preference over the other creditors, and that at the time of the transfer the firm were insolvent and unable to pay its debts in full.

*Held*, on the evidence the firm were not insolvent at the time the agreement was entered into; and that the agreement was valid.

*Maclennan*, Q.C., for the plaintiff.

*George Kerr, Jr.*, and *Duggan*, contra.

Div. Ct.]

### BATE v. CANADIAN PACIFIC RAILWAY.

*Railways—Defective construction—Negligence—42 Vict. ch. 9, sec. 15 (D.), applicability of.*

The road bed of the defendants' railway was on an embankment about fifteen feet high, built on the sloping side of a rock, which sloped into a muskeg or small lake, the embankment being made by the side of the rock being filled in with loose sand, which had no cohesion, and without any retaining wall to keep the sand from slipping. The sand slipped off the side of the rock into the muskeg, and the train on which the plaintiff was travelling on arriving at the place in question was thrown into the cavity caused by the sand so slipping, whereby the train took fire and the plaintiff's baggage was burnt. This part of the road had been in existence about seven years, and had been built by contractors under the Government before the defendants acquired the road, and it was not shown that the defendants had any notice or knowledge of any defect.

By 42 Vict. ch. 9, sec. 25 which is headed "working of the railway," it is enacted that the trains shall be started and run at regular hours, etc., and shall furnish accommodation for transportation of goods and passengers, etc., such goods and passengers to be taken, transported and discharged at, from, and to, such places on the due payment of the due toll, freight, or fares, etc.; and the party aggrieved by any neglect or refusal in the premises shall have an action therefor against