this at all events, never fails to elicit in England. There would be too much the air of a scientific experiment in every execution, and a single instance of failure would, till the rapid increase of murder recalled the peeple to themselves, be fatal to the punishment of death.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, May 27, 1884.

DORION, C. J., MONK, RAMSAY, CROSS and BABY, JJ.

THE MONTREAL CITY PASSENGER RAILWAY CO. (deft. below), Appellant, and PARKER (plff. below), Respondent.

Montreal City Passenger Railway Company—Obstruction authorized by law—Liability for accident.

Where an accident occurred on the track of the Montreal City Passenger Railway Company, and it was proved that the rail was laid as required by the charter of the Company, and that the roadway at the time of the accident was in good order: Held, that the plaintiff could not recover for an accident caused by the wheel of his vehicle catching on the raised part of the rail.

DORION, C. J., (*dissentiens*) said the case appeared to him to be entirely a question of evidence, and after hearing the case twice argued he was unable to concur in the judgment of the majority of the Court.

RAMSAY, J. A very important question arises in this case, and it is the nature of the appellant's liability. It cannot be questioned, I think, that a tramway, in a street used for other vehicles, must be a source of danger; but it does not follow from that, that every accident caused by this increased peril must be put to the company's charge. They have certain powers conferred by law, and if they only exercise these powers in a lawful way, those who come in contact with them do so at their peril. We have therefore to inquire whether the construction of the railway was in conformity with the law, and whether it was in good order. It seems to me that both of these questions must be answered in favor of the company, appellant. The terms of the Act of incorporation authorized the use of a flat rail, of the Philadelphia pattern, modified according to the by-law of the municipal corporation, and that was the form of rail adopted. It is also established that the raised part of the rail, which all respondent's witnesses evidently considered as the immediate cause of the accident, was that used in Philadelphia and sanctioned by the corporation there, and is a necessity to keep the railway car on the track. There was some attempt to prove that the road beside the track was not in good order; but it is quite clear the accident took place on the rail, and not between the road and the rail. It seems to me clear that the hind wheel of the waggon struck the raised part of the rail, and instead of passing over, slipped into the wheel track, and, being caught as in a vice, was twisted off.

Again, the testimony of those who said the road was in bad condition is not very convincing, and is satisfactorily contradicted. It was attempted to make some show of proof that the company, sensible of its wrong-doing, had hurriedly repaired its line. The little evidence in support of this breaks down from want of precision. The inspector of the road says it is not true, but that the road was repaired a few days before and a few days after as usual, and he tells us that it is repaired constantly in this way. The majority of the Court is to reverse with costs.

MONK, J., remarked that his first impression was that the case did not admit of much difficulty, and, after a very careful reading of the evidence, he came to the conclusion that the action was completely unfounded. The track of this railway might be an obstruction and inconvenience, but it was an obstruction permitted by the law. It was established that the rails were laid according to the mode of placing them in Philadelphia. There was no pretension, in fact, that the mode of laying the rails was different from that prescribed by the law. Then, again, it was proved that the road was in perfectly good order. People had been crossing the road at this place over twenty years; it was the same rail that was first laid, and no accident had ever happened. The waggon on which the plaintiff was sitting must have been going too fast. It was im-