

703. The court affirmed the judgment except as to the amount allowed for damage to the building.

*Held*, that, as the building was part of the land, the title to which had been put in issue and which was in the Province of Saskatchewan, the courts of Manitoba have no jurisdiction to entertain an action for such damages. *Brereton v. C.P.R. Co.*, 29 O.R. 57, and *British S.A. Co. v. Mocambique* (1893), A.C. 602, followed.

*Held*, also, that, under s. 298 of the Railway Act, which makes the railway company liable for losses caused by a fire started by a locomotive, "whether guilty of negligence or not," no contributory negligence on the part of the owner, unless it is wanton or such as amounts to fraud in increasing the risk of fire, is available as a defence. *Vaughan v. Taff Vale Ry. Co.* 3 H. & N. 743; *Campbell v. McGregor*, 29 N.B. 644; *Jaffray v. T. G. & B. Ry. Co.*, 23 U.C.C.P. 560; *McLaren v. Canada Central*, 32 U.C. C.P. 341; *Bowen v. Boston & A.R. Co.*, 61 N.E.R., at p. 142; *Matthews v. Missouri Pacific*, 44 S.W.R. 802, and *Matthews v. St. Louis & S.F. Ry. Co.*, 24 S.W.2d at p. 602, followed.

*Fillmore*, for plaintiffs. *Clarke*, F.C., for defendants.

Full Court.]

[June 12.]

WATSON MANUFACTURING CO. v. BOWSER.

*Partnership—Discharge of retiring partner by agreement with creditor inferred from course of dealing—Partnership Act.*

The plaintiff company was a creditor of a firm composed of the defendant and one McDonald. This firm was dissolved in 1902, McDonald taking over the assets, assuming the liabilities and continuing the business. The plaintiff's manager took part in bringing about these arrangements and the company continued to sell goods and give credit to McDonald and subsequently to McDonald & Simmons. It took renewal notes from McDonald to cover the entire liability of the old partnership and the notes sued on were entered in the bill book as paid by these renewals. The balance due by the firm was charged up to McDonald in the new account opened for him in the books and the plaintiff, while persistently urging McDonald for payment during a period of nearly six years, never asked the defendant for payment, although it held the original notes of McDonald and Bowser now sued on. It sought security for this