L. for damages caused by striking her foot against a street crossing in said city and falling, whereby she was hurt. The principal ground on which negligence was based was that the crossing was elevated some three or four inches above the level of the street, which rendered accidents of the kind in question more likely to occur. The jury gave G. a verdict with $500 damages, which the Divisional Court and the Court of Appeal, the latter Court being equally divided, affirmed. On appeal to the Supreme Court of Canada,—

Held, reversing the judgment of the Court of Appeal (14 Ont. App. R.), Strong and Fournier, JJ., dissenting, that the fact of the street crossing being higher than the street did not make the city liable.

Appeal allowed.

W. R. Meredith, Q.C., for the appellants.

R. M. Meredith and *Love*, for the respondent.

[March 18.

KINGSTON & PEMBROKE RAILWAY *v.* MURPHY.

Ry. Co—Expropriation of land — Description in map or plan filed—42 Vic., ch. 9.

No land can be taken for the line of a railway as originally located, or for any deviation therefrom, at any point therein, until the provisions as to places and surveys prescribed as to the original line (by 42 Vic., ch. 9, Railway Act of 1879) are complied with as to every such deviation.

Therefore, where a road had been completed and the company, having obtained additional powers from Parliament as to land they could hold in K., sought to expropriate the land of M., which was not on the map or plan originally registered.

Held, affirming the judgment of the Court of Appeal for Ontario, that they were not entitled to such expropriation.

Appeal dismissed.

Christopher Robinson, Q. C., and *Cattanach*, for the appellant.

S. H. Blake, Q.C., and *Britton*, Q.C., for the respondents.

[March 18.

ELLIS *v.* BAIRD.

Appeal—Contempt of Court—Final judgment—Practice.

E. was served with a rule issued by the Supreme Court of New Brunswick, calling upon him to show cause why a writ of attachment should not issue against him, or he be committed for contempt of Court in publishing certain articles in a newspaper. On the return of the rule, after argument, it was made absolute and a writ of attachment was issued. E. appealed from the judgment making the rule absolute, and by the case on appeal it appeared that the practice in such cases in New Brunswick is that the writ of attachment is issued only in order to bring the party into Court, when he may be ordered to answer interrogatories by which he may purge his contempt, and if he fails to do so the Court may pronounce sentence; but no sentence can be pronounced until the party is brought before the Court on the writ of attachment.

The counsel for the respondent moved to quash the appeal for want of jurisdiction.

Held, that the judgment appealed from was not a final judgment from which an appeal would lie to the Supreme Court of Canada under sec. 24 (a) of the Supreme and Exchequer Courts Act, R.S.C., c. 135.

Appeal quashed without costs.

L. H. Davies, Q.C., for appellant.

L. A. Currie, for respondent.

[March 18.

WINCHESTER *v.* BUSBY.

Trover—Conversion—Bill of lading—Refusal to deliver cargo—Pre-payment of freight—Expenses of storage.

W. was master of a vessel carrying a cargo of coal for B. On arrival W. refused to deliver the coal unless the freight was pre-paid, which B. refused, offering to pay freight ton by ton as delivered. The agent of the owners then caused the coal to be stored, on which the whole freight was tendered by B. and the coal demanded, which the agent refused unless the expenses of the storage were paid. In an action of trover against W.,

Held, affirming the judgment of the Court below, GWYNNE, J. dissenting, that there was a conversion of the coal for which B. could recover in trover.

Held, per PATTERSON, J., that B. had a right of action, but not against the master of