

## REPORTS AND NOTES OF CASES.

## Dominion of Canada.

## EXCHEQUER COURT

Cassels, J.]      ADLINE PARENT v. THE KING.      [May 4.

*Government railway—Injury to the person—Vehicle on crossing  
—Speed of train—Sec. 34, R.S. 1906, c. 36—Faute commune  
—Reckless conduct of driver of vehicle—Identification.*

*Held*, 1. As the point where the accident in question occurred was not a "thickly peopled portion of a . . . village," with in the meaning of s. 34 of R.S. 1906, c. 36, the officials in charge of the engine and train were not guilty of negligence in running at a rate of speed greater than six miles an hour. *Andreas v. Canadian Pacific Ry. Co.*, 37 S.C.R. 1, applied.

2. Under the law of Quebec where the direct and immediate cause of an injury is the reckless conduct of the person injured the doctrine of *faute commune* does not apply, and he cannot recover anything against the other party.

3. Where a person of full age is injured in crossing a railway track by the reckless conduct of the driver of a vehicle in which he is being carried, as between the person injured and the railway authorities the former is identified with the driver in respect of such recklessness and must bear the responsibility for the accident.

*Mills v. Armstrong (The Bernina)*, L.R. 13 A.C. 1, referred to and distinguished.

*Lemeux*, K.C., for suppliant. *Chrysler*, K.C., for the Crown.

Cassels, J.]      HAVELOCK MCCOIL HART v. THE KING.      [Sept. 16.

*Railways—Siding—Undertaking in mitigation of damages in prior suit—Right of suppliant to maintain action.*

In certain expropriation proceedings between the Crown and the suppliant's predecessor in title, the Crown, in mitigation of damages to lands not taken, filed an undertaking to lay down and maintain a railway track or siding, in front of, or adjoin-