

to show that the offence was a joint one. *Regina v. Provost*.—Dorion, C. J., Monk, Tessier, Cross, Baby, JJ., March 19, 1885.

Contract—Lease of Steam-power—Sub-lease.

Held :—That a contract of lease of steam-power to the extent of six-horse power, was not violated by sub-letting a portion of the motive power, there being no more power used than was mentioned in the lease, and there being no prohibition against sub-letting.—*Sharpe et al.*, appellants, and *Cuthbert et al.*, respondents.—Monk, Ramsay, Tessier, Cross, Baby, JJ. May 26, 1885.

Procedure—Declaration of Tiers Saisi—Contestation—C. C. P. 619.

Held :—Where the garnishee has declared that he owes the defendant nothing, but in answer to questions put by the judgment creditor, under C. C. P. 619, has made admissions which apparently show that he has a sum in his hands belonging to the defendant, that the proper course is to contest the declaration, and not to inscribe for judgment *ex parte* on such statements. *Grant*, appellant, and *The Federal Bank of Canada*, respondent. Dorion, C. J., Monk, Cross, Baby, JJ. Nov. 25, 1885.

PRIVY COUNCIL.

LONDON, NOV. 19, 1885.

Coram LORD FITZGERALD, LORD MONKSWELL, LORD HOBHOUSE, SIR BARNES PEACOCK, SIR R. COUCH.

THE MONTREAL CITY PASSENGER RAILWAY Co., Appellants, and PARKER, Respondent.

Appeal from Supreme Court—Leave to appeal refused on question of evidence.

This was an application for special leave to hear the appeal of the appellants against a decision of the Supreme Court of Canada.

Mr. *Jeune* said the action was brought for personal injuries against the Montreal City Passenger Railway company. The cause of action was that the respondent was travelling in a waggon through the streets of Montreal, and across the track of the railway, and the waggon in which he was, caught the rail in some manner and he was thrown out of it.

LORD FITZGERALD—Is there any question of amount?

Mr. *Jeune*—No, my lord. The question is one of law, and of considerable importance to the railways in Canada. That is the proposition which I shall have to contend for, and what I wish to show is this, that the learned judge of the court below in the first instance never decided the case on the facts at all, but decided it on what I submit is clearly an erroneous principle of law of very considerable importance indeed. What he held was that this company, being governed by a by-law and by a provision of an act of Parliament the by-law must prevail. The by-law provided that the railway shall be liable for accidents caused by the obstruction made by placing the rails in the streets, and the act of parliament provided that the rails should be laid down in a particular way. The view of the railway company (and on which they have acted) is this: That if they make their railway through the streets according to the provision of an act of Parliament they are not liable for accidents caused by their rails being so constructed, and that the provision in the by-law which makes them liable in all cases practically is subjected to the express provision of the act of Parliament, which says that they must lay down their rails in a particular way. If they do lay down their rails in that way they are not liable for the rails being so laid down. That is what I say the court of first instance decided wrongly in holding that the company was liable for the accident caused apart from negligence. The learned judge did not decide on the real facts at all, that is to say, on the question of negligence on the part of the defendants, but he decided it on an erroneous principle of law. Then the case went to the Court of Appeal, and there they decided the facts by four to one in favor of the railway company that there was no negligence. It then went to the Supreme Court, who decided the question of fact the other way. It was a case of considerable hardship on the railway company, for the judge in the Court of first instance heard the evidence and pronounced no opinion upon the facts, but went wrong in his law, and the Court of Appeal on that decided by a majority of four to one on the facts