

dame Anathalie Trudel, and the plaintiff *par reprise d'instance*, Arthur M. Perkins *es qualité*, by their respective attorneys on the merits of the petition by which dame Anathalie Trudel prayed that, considering the account rendered and filed by her before this Court, on the 20th April, 1881, the said petitioner be relieved of all responsibility to satisfy out of her personal property the amount of the judgment rendered in this case, and that *mainlevés* of the seizure by garnishment after judgment now pending be granted to her so far as her personal property is therein concerned, and upon the merits of the contestation of said petition by the plaintiff *par reprise d'instance*; having, moreover, examined the procedure, the evidence, the admissions and consents, the exhibits filed, and generally all the papers forming part of the record in this cause, and having maturely deliberated;

"Considering that if the petitioner, by surrendering the property transferred to her or by rendering an account to the creditors, had the right either to be completely discharged of the debt for which she was sued as universal donee in usufruct of her late husband, or to have the amount of the judgment reduced in proportion to the benefit she derived from the estate, she should have taken advantage of that right in the suit originally brought against her, which she has then failed to do;

"Considering that the petitioner has been condemned jointly with the executors of her said husband to pay the debt then claimed by the plaintiff and that such condemnation became direct, *pure et simple*, and personal against the petitioner, and can and must be executed on all her personal property;

"Considering that far from having surrendered the property or having rendered an account thereof in due time, the petitioner accepted unconditionally the universal grant in usufruct made to her; took possession of the whole of said property; gave acquittance and discharge to the executors; answered the actions taken against her in her quality of universal usufructuary donee; was condemned as such; satisfied in part such condemnation; administered to this day the whole of the said property and sold a part of it; enjoyed the revenues of the said usufruct, and paid (as she herself declares) all the debts except the one due to the plaintiff *par reprise d'instance*; and that, after having

administered and enjoyed the said property during nearly twenty years without any possible interference or control on the part of the creditors, she cannot to-day offer to render an account to the plaintiff *par reprise d'instance* to establish an alleged deficiency and be discharged of a personal condemnation which is no longer revocable, and in which she acquiesced by not invoking in due time the privileges and rights to which she is no longer intitled;

"Doth maintain the answers and exceptions of the plaintiff *par reprise d'instance*, and doth dismiss and reject the petition of the said dame Anathalie Trudel with costs against her."

Taillon & Nantel, for petitioner.

Laflamme & Co., for plaintiff *par reprise* contesting.

CIRCUIT COURT.

MONTREAL, March 22, 1883.

Before TORRANCE, J.

THÉRIEN v. MORRICE *et al.*

Negligence—Damages.

Where a collision occurred between two vehicles, and both drivers were in fault, but it appeared that the accident nevertheless might have been averted by ordinary care on the part of one, who did not stop when requested, the latter was held liable in mitigated damages.

This was an action of damages arising out of a collision between the cart of plaintiff and the waggon of defendants, by which the horse and cart of plaintiff were thrown down an embankment at Hochelaga Railway Station. The cart and waggon were both loaded. The cart was drawn by one horse, loaded with wood and driven by a boy of 17, for plaintiff, and the waggon was drawn by two horses, driven by the servant of defendants. The cart was coming out of the railway station and the waggon was going in the opposite direction. The road where they met led from the station to St. Mary street. It was 35 to 40 feet wide, and on one side was a declivity, down which the horse and cart were precipitated.

Several witnesses were examined. Louis George Filiatrault, the first examined, was the guardian at the station, and saw the most of the accident. He was 200 yards off. Both vehicles were on the wrong side—on their left. Afterwards (he says) it was the fault of the waggon. The right wheel of the cart and the right wheel