

judgment was assigned to C. & P. as security. C. & P. then undertook to supply J. with goods for which, as they claim, he was to pay cash. After a time C. & P. refused to give J. further goods, and recovered judgment against him on a demand note for a portion of their claim. Other judgment creditors of J. attempted to realize on his stock, and an inter-pleader order was issued in which C. & P. claimed to rank on the judgment of G. which had been assigned to them. The other creditors claimed that this judgment was satisfied, if not by the settlement with G. for 80 per cent, at all events by J's subsequent payments. C. & P. on the other hand claimed that these payments were all on account of the new supplies of goods for which J. was to pay cash. In his evidence on the trial of the interpleader issue, J. swore that the agreement to pay cash was only for one year, and after that all payments were to be on the old account. The payments were sufficient if so applied to satisfy G's judgment.

Held,—Affirming the judgment of the Court below, Gwynne and Patterson, JJ., dissenting, that the evidence was not sufficient to rebut the presumption that the payments were on account of the earlier debt.

Appeal dismissed.

Lash, Q.C., for appellants.

G. Davis and G. Mills for respondents.

OTTAWA, March 18, 1889.

Quebec

GALARNEAU et al. v. GUILBAULT &c

Title to Bridge—Appeal—R.S.C. ch. 135, Sec. 29 (b)—38 Vic. ch. 97—Statutory privilege to maintain Toll Bridge—Infringement—Damages.

By 38 Vic, ch. 97, the appellants, authorized to build and maintain a toll bridge on the River L'Assomption at a place called "Portage," were bound, "if the said bridge should by accident or otherwise, be destroyed, become unsafe or impassable, to rebuild the said bridge within the fifteen months next following the giving way of the said bridge, under penalty of forfeiture of the advantages to them by this act granted; and during any time that the said bridge should be unsafe or impassable, they should be

bound to maintain a ferry across the said river for which they might recover the tolls."

The bridge was accidentally carried away by ice, but rebuilt and opened for traffic within fifteen months. During the reconstruction, although appellants maintained a ferry across the river, the respondent built a temporary bridge within the limits of the appellant's franchise, and allowed it to be used by parties crossing the river.

In an action brought by the appellants, claiming \$1000 damages and praying that respondent be condemned to demolish the temporary bridge, on an appeal to the Supreme Court it was

Held,—1st, that as the matter in dispute related to the title of an immoveable by which rights in future might be bound, the case was appealable. R.S.C., ch. 135, sec. 29 b. 2nd, reversing the judgment of the Court below, that the erection of the respondent's bridge and the use made of it as disclosed by the evidence in the case, was an illegal interference with appellants' statutory privilege, but as this bridge had since been demolished the Court would merely award nominal damages, viz., \$50 and costs.

Ritchie, C.J., and *Patterson, J.*, dissenting.

Appeal allowed with costs.

Laflamme, Q.C., for appellant.

McConville, for respondent.

OTTAWA, March 18, 1889.

Quebec

EVANS v. SKELTON et al.

Lease—Accidents by fire—Arts. 1053, 1627, 1629, C.C.

By a notarial lease the respondents (lessees) covenanted to deliver to the appellant (lessor) certain premises in the city of Montreal at the expiration of their lease, "in as good order, state, &c. as the same were at the commencement thereof, reasonable tear and wear and accidents by fire excepted."

The premises, used as a shirt and collar factory, were insured, the lessees paying the extra premium, and having been destroyed by fire during the continuance of the lease, the amount of the insurance money was received by the appellant.

Subsequently the appellant (alleging the fire had been caused by the negligence of the