

## REPORTS AND NOTES OF CASES.

## Dominion of Canada.

## EXCHEQUER COURT.

Audette, J.]

BROCHU v. THE KING.

[March 12.

*Negligence—Government railway—Injury to the person—Trespasser—Liability.*

B., in going towards a station of the Intercolonial Railway, instead of using a safe public way or road thereto, entered, contrary to the provisions of s. 78 of the Government Railways Act, upon the track of the railway, drawing behind him a small sled containing two valises. It was dusk at the time, but there was light enough for him to see, as he did, a train approaching him. This train consisted of a locomotive and tender, with a snow-plough attached. B., instead of getting out of the way as soon as he saw the train, attempted to pick up one of the valises that had fallen from the sled, an act which rendered it too late for him to escape being struck by the train. Upon the trial of his petition of right for damages, it appeared that the suppliant had at the time an unreduced fracture of the right leg, which impeded his movements. On the other hand, the fact that the place where the accident happened being a "thickly peopled district" within the meaning of s. 34 of the said Act, was not established beyond question; nor was it shewn conclusively that the track there was not properly fenced. The engine-driver had complied with all statutory requirements as to whistle and bell, and his train was running at a rate of about twelve to fifteen miles an hour. He did not see B. on the track until he was some fifteen feet from him, and the emergency brakes were at once applied.

*Held*, that, inasmuch as B. was a trespasser on the track, the only duty cast upon the engine-driver was to abstain from wilfully injuring B. while so trespassing, and, further, that, inasmuch as the engine-driver had applied the emergency brakes as soon as he saw B. on the track, he had done all he could to avoid the accident, and there was no negligence attributable to him.

*O'Bready and Panneton*, solicitors for suppliant. *J. B. L. Moreau*, solicitor for defendant.