

Held, reversing the decision of the Court of Appeal (18 Ont. App. R. 622), and that of Ferguson, J., at the trial (20 O. R. 9) Patterson, J., dissenting, that the legislature intended and enacted that the rate for water supplied by the City should be an equal rate charged upon all consumers alike, and the city corporation had no power to impose a greater rate for water supplied to a consumer who is not subject to civic taxation than is imposed upon consumers who are; therefore the by-law was *ultra vires* in so far as it makes a distinction between the two classes of consumers.

Per Patterson, J.—The imposition of water rates is not a tax, and there is no principle on which the city can be prevented from demanding a larger price for water supplied to consumers who have paid no part of the cost of constructing the works than it is willing to receive from those who have.

Appeal allowed with costs.

Reeve, Q.C. & Wickham, for appellant.

Robinson, Q.C., for respondent.

New Brunswick.]

CANADIAN PACIFIC RY. CO. V. FLEMING.

Appeal—Jurisdiction—Trial by jury—Withdrawal from jury—Disposal of questions of fact by Court—Consent of parties.

In an action against a railway company for damages for an injury caused by an engine of the company, the counsel for both parties agreed at the trial as follows:—"That the jury be discharged without giving a verdict, the whole case to be referred to the Court, which shall have power to draw inferences of fact, and if they shall be of opinion upon the law and the facts that the plaintiff is entitled to recover they shall assess the damages, and that judgment shall be entered as the verdict of the jury. If the Court should be of opinion that the plaintiff is not entitled to recover, a non-suit shall be entered." The jury were then discharged, and the Court in banc, in pursuance of such agreement, subsequently considered the case and assessed the damages at \$300, considering plaintiff entitled to recover. The company sought to appeal from such decision.

By the practice in the Supreme Court of New Brunswick all questions of fact are to be tried by a jury, and the Court can only deal with such questions by consent of parties.