

paid by means of a special assessment on the proprietors and usufructuaries in proportion to the frontage of their properties. The appellant was assessed on 27th January, 1877, and during 1877 and 1878 she paid the assessment, including interest, in three instalments, two payments being made after notice and request given and made under the above Act, and the third without notice. She made the payments without protest or reserve and without objecting to the construction of the pavement. The action was brought to recover the amount so paid.

Held, affirming the judgment of the Court below, (HENRY and GWYNNE, JJ., dissenting) that the presumption was that, when the appellant paid the amount of the assessment, she was aware of the grounds on which she now relies to recover the amount, and that the payments were not made through error nor under *contrainte*, but voluntarily.

Held, also, that the respondents in laying pavements in parts of the City, only the cost of which was to be paid by assessment according to the frontage of the respective properties and not in proportion to the cost of the part laid opposite each property, were acting within the scope of the power conferred upon them by 37 Vict., cap. 51, sec. 192.

Barnard, Q. C. and *Creighton*, for the appellants.

Rae, Q. C., for the respondents.

BANK OF MONTREAL V. PERKINS.

The Banking Act—Advances on Real Estate.

B., on 29th January, 1876, transferred to the appellants by notarial deed an hypothec on certain real estate in Montreal, made by one C. to him, as collateral security for a note which was discounted by the appellants and the proceeds placed at B.'s credit on the same day on which the transfer was made. The action was brought by the appellants against the insolvent estate of C. to set aside a prior hypothec given by C. and establish their priority over it.

Held, affirming the judgment of the Court of Queen's Bench, that the transfer by B. to the appellants was null and void as being in contravention of the Banking Act, 34 Vict., cap. 5, sec. 40.

Laflamme, Q. C., for the appellants

Benjamin, for the respondents.

REGINA V. MCLEOD.

Petition of Right—Government Railway—Negligence—Crown, not common carriers.

The suppliant purchased a first-class ticket to travel from Charlottetown to Souris, on the P. E. I. Railway, which is owned by the Dominion of Canada, and worked under the management of the Minister of Railways, and while on his journey he sustained serious injuries, the result of an accident to the train. The learned Judge at the trial found that the road was in a most unsafe state from the rottenness of the ties, and that the safety of life had been recklessly jeopardized by running trains over it with passengers, and that there had been a breach of the contract entered into by Her Majesty through her authorized agent to convey the suppliant safely and securely on said journey, and he awarded \$36,000 damages.

Held, (FOURNIER and HENRY, JJ., dissenting) that the establishment of Government Railways in Canada is a branch of the public service, created by Statute for purposes of public convenience, and not entered into upon or to be treated as private mercantile ventures, and therefore, that a petition of right does not lie against the Crown for injuries resulting from the non-performance, misfeasance, wrongs, negligence, or omission of duty of the subordinate officers or agents employed in the public service.

Held, also, that the Crown not being a common carrier, is not liable for the safety and security of passengers using government railways.

Lash, Q. C., and *Hodgson*, Q. C., for the Crown.

Davis, Q. C., and *A. F. McIntyre*, for the respondent.

GIRALDI V. LA BANQUE JACQUES CARTIER.

Agency—Payment—C. C., art. 1143—Parties.

S. Giraldi acquired during the life of his first wife, M. A. Bosna, who died in 1845, certain immoveable property which formed part of the *communauté de biens* existing between them. At his death, in 1869, after his marriage with Henriette Senecal, his second wife, he was greatly involved. His widow, H. S., having accepted, *sous bénéfice d'inventaire*, the universal usufructuary legacy made in her favor, by S. G., continued in possession of his estate as well as of that of M. A. Bosna, the first wife, and administered both, employing one G, to collect,