space between the tracks in the yard where the plaintiff would have been safe, he was guilty of negligence in walking between the rails, and could not recover.

Callender v. *Carleton Iron Co.* (1893) 9 Times L.R. 646; and (1894) 10 Times L.R. 366, followed. Judgment of MEREDITH, J., affirmed.

W. J. Elliott, for the appeal. *W. Nesbitt*, Q.C., and *H. E. Rose*, contra.

Meredith, C.J., Falconbridge, C.J.] [Jan. 15

MCPHERSON *v.* TRUSTEES S.S. No. 7, USBORNE.

Public schools—Agreement with teacher—Dismissal—Seal—Validity—R.S.O. c. 292, s. 19.

Semble, where public school trustees had entered into an agreement for securing the services of a teacher, and had directed the officer who had the custody of the seal to affix it, and both parties had for two years acted on it as a binding agreement, the fact that the seal had not been actually affixed would not invalidate the agreement.

Where such an agreement is entered into with the intention that it shall supersede a previous agreement of a like character entered into between the trustees and the same teacher, if the second never becomes operative, the first agreement will remain in force and govern the relations between the teacher and the trustees.

Where such an agreement is valid on its face and has been acted upon for several years, the onus of proving invalidity by reason of anything for which s. 19 of the Public School Act, R.S.O. c. 292, s. 19 (which enacts that no proceeding of a rural school corporation shall be valid or binding unless adopted at a meeting at which at least two trustees are present, except as stated in that section) provides not having been done, rests upon the trustees: and *semble*, the absence of a formal minute of the proceedings of the meeting at which the first agreement was signed would not be fatal to its validity.

J. B. Clarke, Q.C., for appellants. *Garrow*, Q.C., for respondent.

Ferguson, J.] MCCOSH *v.* BARTON. [Jan. 17

Fixtures—Moulding patterns—"Plant"—Temporary absence from factory—Made parcel of realty by mortgage.

Plaintiff was mortgagee of an electro plating factory under a mortgage which contained, after the description of the land, the following clause: "Together with all the plant and machinery at present in use in the said factory situate upon the said land, which said plant and machinery are and are hereby declared to be part and parcel of the real estate."