Alexander v. Toronto & Nipissing Railway Company.

Railway Co.—Negligence—Contract—Limiting liability.

Declaration under C. S. C. ch. 78, by the administrator of A, alleging that A was lawfully on the platform at a station on defendants' railway, and defendants so negligently managed and drove an engine and carriages loaded with timber along the line near said station, that a piece of timber projecting from said carriage, struck and killed the said A.

Plea, that A was a newsboy in the employ of C. & Co., vending papers on defendants' trains under an agreement between C. & Co., and defendants, which agreement provided that defendants should carry C. & Co., their newsboys and agents on their said trains, and should not be liable for any injury to the persons or property of said C. & Co., their newsboys or agents, whether occasioned by defendants' negligence or otherwise. *Held*, plea good without alleging that A was a party to or aware of this agreement.

Quære, if such a contract is to be considered as made with the person carried, and if so, as to the effect of his being an infant.

Tighe v. Wilkes.

Slander—Demurrer—Special Damage.

Declaration that the plaintiff was and is a clergyman of the Church of England, and that the defendant falsely and maliciously spoke and published of him in relation to his said profession, "he will get drunk, I have seen him drunk," meaning thereby that the plaintiff was an unfit and improper person to exercise his said calling, whereby the plaintiff was injured in his good name, and shunned by divers persons. No averment of special damage.

Held, on demurrer, that declaration bad.

COMMON PLEAS.

Clayton v. Great Western Railway Company.

Railway Co.—Obligation to fence—Liability.

H., the owner of land crossed by defendants' railway, let to G. under a verbal lease for three years a certain piece of it, near to but not immediately adjoining the railway, there being a small strip intervening. There was no fence along the line of the railway, but the defendants had erected in lieu thereof, at the express wish of the owner, by whom it was considered sufficient, a fence at right-angles to the railway, running to a pond, across which the owner had planted a row of willows, with which he alleged a fence would interfere, the small strip being between the pond and the railway. It appeared that G. had received the plaintiff's horse to pasture, and on account of the water in the pond being low, the horse got out of the pasture field round the fence, and thence across the small strip to the railway, where it was injured.

Held, that the fence having been built, as it was, at the express wish of the owner, by whom it was considered sufficient, and who in fact objected to one along the line of the railway, the plaintiff claiming through him could not recover.

COMMON LAW CHAMBERS.

Elliott v. Northern Assurance Company.

Revision of taxation after costs paid.

[Master's Office, Q. B., Dec. 15th, 1873.]

The bill of costs in the cause having been taxed by the local master, the plaintiff paid the amount taxed without protest.

Held, that he still was entitled to a revision of taxation before the master at Toronto.

Costs of demurrer books.

[Wilson J., Dec. 1st, 1873.]

After issue joined on demurrer, but a month before Term, plaintiff prepared demurrer books. The case was subsequently referred to arbitration, costs of the pleadings, etc., to be costs in the cause.

Held, that the preparation by the plaintiff of the demurrer books was reasonable, and that he must be allowed costs of the same on taxation as part of the necessary proceedings in the cause before the reference.

CHANCERY CHAMBERS.

Quantz v. Smelzer.

Answer of a co-defendant filed without authority.

[The Referee, November 15th, 1873.]

Two defendants moved to set aside a notice of hearing, and to strike the cause out of the list, on the ground that the answer of some co-defendants had been filed without authority from them, and therefore the litigation might be reopened by them.

Held, that the parties whose names were improperly used were the only persons who could move to set aside proceedings.

The defendants whose names had been so used subsequently moved to set aside the proceedings. The application was adjourned by the Referee before the Judge (V. C. Blake) at the hearing, who ordered the cause to be struck out with costs.

Campbell v. Campbell.

Interim alimony.

[The Referee, November 25th, 1873.]

The question whether the plaintiff has been guilty of adultery cannot be raised in opposition to an application for interim alimony.

Wilson v. Wilson.

Interim alimony.

[The Referee, November 26th, 1873.]

The fact that the defendant is willing to take back the plaintiff to live with him is no answer to an application for interim alimony.