

Chan. Div.] NOTES OF CANADIAN CASES—NOTES OF RECENT CASES IN MANITOBA.

Per PROUDFOOT, J.—The Order in Council imposes no duty and confers no right upon the defendants in regard to the construction of the subway. It is strictly confined to the railway companies, and authorizes *them* to do all the works requisite.

The defendants were not acting under their municipal powers, for these did not extend to works beyond their own boundaries, as are the works in this case, and the proper steps had not been taken as required by the Municipal Act.

They may employ agents, engineers, overseers and workmen, but they cannot act in that capacity.

Assuming it to be necessary to show the act complained of to be within the scope of their authority, in order to make them liable therefor, it is shown here; for by taking the proper steps under the Special Act 46 Vict. c. 45 (O.), they might have executed the work in question. Not having done so they are trespassers, but within the scope of their authority, and therefore liable.

McCarthy, Q.C., Osler, Q.C., and J. H. McDonald, for the appeal.

S. H. Blake, Q.C., Lash, Q.C., and Dr. Snelling, contra.

Divisional Court.]

[Feb. 23.]

SMITH V. GRAY.

Foreign commission—When granted.

Held, on appeal, affirming the order of PROUDFOOT, J., that a commission should not be granted to take evidence abroad till after issue joined in the action, and not unless it be shewn on affidavit what evidence the party seeking the commission expects to obtain.

H. D. Gamble, for the defendant.

Arnoldi, for the plaintiff.

Boyd, C.]

[March 3.]

MILLER V. STILLWELL.

Held, following *Dayer v. Robertson*, 9 P. R. 78, and *Lowson v. Canada Farmers*, in *ib.* 185, that the time for appealing for an order of the Master in Chambers runs from the date of the decision, not from the date of the entry of the order.

W. M. Hall, for the defendant,

Watson, for the plaintiff.

PRACTICE.

Mr. Dalton, Q.C., }
Rose, J. }

[Feb. 11.]

MCCULLOUGH V. SYKES.

A motion by the defendant to set aside an order for leave to issue execution in this action, made under the circumstances set out in the judgment of the Master in Chambers, was refused with costs,

Harman, for the motion.

George Bell and C. E. Jones, contra.

NOTES OF RECENT CASES IN
MANITOBA.

FROM MANITOBA LAW REPORTS.

Fencing railway—Accident—Liability of company.

Action for the value of an ox, killed by defendant's locomotive. The animal was on the prairie close to the track. The engineer reversed the engine and whistled, but, before the train could be stopped, the animal having got on the track, was run over and killed.

Held, 1. That the evidence did not disclose such negligence as would entitle the plaintiff to recover.

2. That where the land adjoining the railway is unoccupied, the company is not bound to erect fences at that part of their line.—*McFie v. Canadian Pacific Railway Co.*

Mandamus to purchase bridge—Bridge company—Local charter—Navigable river—Jurisdiction of Legislative Assembly.

By an Act of the Legislative Assembly of Manitoba, 45 Vict. c. 41, the Brandon Bridge Company was incorporated and empowered to build a bridge across the Assiniboine River; and, by another Act, 45 Vict. c. 35, incorporating the City of Brandon, power was given to the mayor and council to purchase any bridge built, or being built, within the city.

On an application by an adjoining land owner for a *mandamus* to compel the city to purchase the bridge,

Held, 1. The Act authorizing the building of the bridge was *ultra vires* of the Local Legislature.

2. That the title of the Bridge Company was not such as would be forced upon an unwilling purchaser.—*Re Brandon Bridge.*