

enough to invalidate a subsequent patent, by proving that what is thereby claimed is not wholly new.

In a suit by a patentee for infringement of his patent, the court may, under 21 & 22 Vic. c. 27, decree at the same time an injunction, an account, and an inquiry as to damages.

Damages may be awarded, though not specifically prayed for by the bill. (*Catton v. Wyld*, 32 Beav. 266.)—*Betts v. Neilson*, 16 W. R. 524.

CARRIER — NEGLIGENCE — EXTRAORDINARY DANGER.—A carrier of passengers is not bound to take precautions against an ordinary danger, to which his passengers are liable on a journey, and which they must be assumed to take upon themselves; but he is bound to take reasonable precaution against an extraordinary danger, which is known to him, and is not known to them. If a passenger sues him for injury resulting from such danger, the passenger must show a reasonable probability that the accident happened from the want of such precaution, and he must define the precaution with reasonable certainty. In such case a failure to adopt a usual precaution is evidence of negligence, though not conclusive. —*Daniel v. The Metropolitan Railway Company*, 16 W. R. 564.

ONTARIO REPORTS.

ELECTION CASES.

(Reported by HENRY O'BRIEN, Esq., Barrister-at-Law,
Reporter in Practice Court and Chambers.)

REG. EX REL. WALKER V. MITCHELL ET AL.

*Municipal election—Name of candidate omitted from list—
Effect on result of election.*

In the list of candidates for the office of township councillors given to one returning officer, out of five for the township, previous to the election, the name of Alex. Henry, one of the candidates, and who had been duly nominated for the office of councillor, was accidentally omitted from, and was not placed upon the list of candidates until half-past one o'clock of the first day of the polling, whereby Henry certainly lost six votes and possibly more. The relator and one Stubbs having an equality of votes, the returning officer voted for Stubbs, who, with two other candidates, having a larger number of votes, were declared elected as the three councillors for the township. The relator and Alex. Henry protested against the election, contending that the whole result of the election had been affected injuriously to one or both of them by the omission of the name.

Upon an application to set aside the election it was held, that it is not every irregularity that will vitiate an election, and that in this case the question to be decided was not as to the mere abstract ground of the omission of the name, but only what effect it had upon the final result of the election; and that, as it did not appear that the result would have been different if the name of Alex. Henry had been properly entered on the list, the election should not be set aside.

Quære as to the right of the returning officer to add the omitted name to the list of candidates.

[Common Law Chambers, March 5, 1868.]

This was a *quæ warranto* summons respecting the office of councillor of the Township of Caledon.

The statement set forth that there were ten candidates nominated on the last Monday but one in December for the office of councillor to which three persons were to be elected, beside the reeve and deputy reeve, the names being Alexander Mitchell, George Atkinson, Samuel Stubbs, Justus Lemon, John Smith, Jacob Carrington, Nathaniel Patterson, Alex. Henry, Thomas Bell, and William Wilson Walker, the relator, and that a poll was demanded.

That the clerk should have provided the returning officers of the five electoral divisions into which the township is divided each with a certified list of such candidates; but the clerk did not provide the returning officer of No. 2 electoral division with such certified list, there being omitted from the list furnished to such returning officer the name of Alexander Henry, who had been duly proposed, and who was then and until the close of the election a candidate for the office of councillor of the township.

That the returning officer did not, nor did his poll clerk for No. 2 electoral division, enter in his poll book at the opening of the Poll, nor for several hours afterwards, the names of all the candidates, but omitted the name of Alexander Henry until a late hour of the day of election, whereby no vote was taken in his favour until about 2 o'clock in the afternoon, although there were electors present who would have voted for Alexander Henry if his name had not been improperly omitted as aforesaid; and whereby it became rumoured through the said division and other parts of the township that Alexander Henry was not a candidate, and in consequence many electors refrained from voting or voted for other candidates.

That the returning officer had no proper authority for entering the name of Alexander Henry upon the poll book in the afternoon of the 6th day of January.

That at the time of the declaration the relator, by reason of these and the other grounds mentioned in the statement, entered a written protest against the election of the three councillors returned as elected.

The affidavit of Wm. McBride, the returning officer for this division, stated the fact of the omission of Alex. Henry's name from the certified list of the candidates names furnished by the clerk of the township, and that his name was not entered as a candidate in the poll book till about half-past one in the afternoon of the following day, and not until a number of electors had tendered their votes for him, and whose votes were refused in consequence of his name not having been on the list furnished by the clerk.

That at least six electors tendered their votes for Alexander Henry, which votes were rejected, and there may have been many others present who did not go through that formality, before the returning officer put his name on the poll book and ten votes were taken for him after his name was entered; and the general impression among the electors present was, that in consequence of the omission there would be a new election if the one then being held was protested against.

Alexander Henry stated, after mentioning the circumstances in general above referred to, that in consequence of the omission he believes the