where he was injured by the defendant "kicking" cars upon its side switch: *Held*, that the defendant was lawfully engaged in its proper business, upon its own property, and had no reason to apprehend that a child would come unattended upon its tracks in the immediate front of a slowly moving freight-car, and the judgment for the plaintiff was reversed and a new trial ordered: *Malone* v. *Boston & Albany R.R. Co.*, 51 Hun, 532.

An infant three years old was injured on board the steamship Burgundia by the rudder chain, which ran into an open box on the main deck. He had been left by his nurse alone, and when hurt he was in a part of the ship where he had no right to be. *Held*, that the fault rested with those who had charge of the child, and that the vessel was not liable for the injury: *The Burgundia*, 29 Fed. Rep. 464.

Whether it is negligence in the parents of a child a year and ten months old to send him out on the street for air and exercise, in charge of his brother, who was eight years old, is a question of fact for the jury, depending upon how much the street is used, and upon the intelligence, capacity and experience of the elder child: *Bliss* v. *Town of S. Hadley*, 145 Mass. 91.

Where the mother set a cup of bread and milk before a child sixteen months old, and went into an adjoining room to strain milk, when the child wandered out of the house and upon a railroad track and was killed, it is for the jury to say whether she was guilty of contributory negligence: *Riley* v. *Hannibal & St. Jo. R. R. Co.*, (Mo.) 7 S. W. Rep. 407.

An infant, of less than five years, was under the care of his mother, who had a nursing child, and had been in the house nearly all the afternoon. Upon her going into another room for a moment or two, without her knowledge or consent, he went out upon the street, where he was injured. There was no evidence of what he was doing at the time. *Held*, that the jury were warranted in finding no want of due care on the part of either the mother or child: *Marsland* v. *Murray*, (Mass.), 18 N. E. Rep. 680.—*N. Y. Law Journal.*

COUR DE MAGISTRAT.

MONTRÉAL, 17 avril 1889.

Coram CHAMPAGNE, J.

IRVINE v. BURCHELL.

Action sommaire—Plaidoierie—Exception à la forme—Délai.

Sur motion pour faire renvoyer une exception à la forme produite le troisième jour après le retour de l'action, dans une cause sommaire:

JUGÉ:—1o. *Que dans les causes sommaires, d'après l'acte* 51-52 *Vict., ch.* 26, *le défendeur est tenu de plaider, même à la forme, sous deux jours à compter de la comparution.*

2o. *Que lorsque le deuxième jour est un jour non juridique, le plaidoyer peut être produit le troisième jour.*

Motion renvoyée.

E. Desrosiers, avocat du demandeur.

W. S. Walker, avocat du défendeur.

(J. J. B.)

COUR DE MAGISTRAT.

MONTRÉAL, 9 mai 1889.

Coram CHAMPAGNE, J.

SEGUIN *et al.* v. GAUDET, et le dit SEGUIN, reqt. en désaveu, et BOURGOIN et PELLAND, déf. en désaveu.

Désaveu—Procureur ad litem—Procédure.

JUGÉ:—1o. *Que l'avocat peut en vertu de son mandat général ad litem renoncer à un acte de procédure nul en la forme, pour le remplacer par un acte régulier;*

2o. *Que pour qu'il y ait ouverture à l'action en désaveu, il faut qu'il y ait faute grave de la part de l'avocat;*

3o. *Qu'il faut de plus qu'il y ait eu préjudice causé à la partie qui se plaint, et la question de savoir s'il y a eu préjudice relève entièrement de l'appréciation du juge;*

4o. *Que lorsque, comme dans l'espèce, il appert par les allégations de la requête en désaveu que loin d'avoir souffert quelque dommage, la position du requérant a été rendu meilleure par l'acte de son avocat, la requête en désaveu doit être renvoyée.*

PER CURIAM.—MM. Bourgoin et Pelland furent chargés par les demandeurs de prendre une saisie-arrêt avant jugement contre le dé-