

teacher so convincing as the pocket, and if all the employed and their employers are vaccinated, there will not be much trouble in dealing with the unemployed.

COUR SUPÉRIEURE.

MONTREAL, 4 juin 1884.

Coram LORANGER, J.

ROULEAU V. LALONDE.

Plaidoyer—Motion—Illégalités prima facie.

JUGÉ:—*Que lorsqu'une question a été soulevée par un plaidoyer au mérite, le défendeur ne peut, par motion, demander le renvoi de l'action pour les mêmes raisons mentionnées en son plaidoyer, quand même l'action serait illégale à sa face même.*

Le demandeur poursuit le défendeur pour la pénalité de \$200 accordée à toute personne qui en poursuivra la demande, par l'Acte des élections fédérales, contre les électeurs qui commettent des actes considérés frauduleux par cette loi.

Au mérite de cette action, le défendeur plaide, entr'autres choses, que cette action en est une qui tombe sous le chapitre 43 de 27-28 Vict., exigeant que toutes les actions *qui tam* fussent précédées d'un affidavit. Et que le demandeur a, dans cette cause, fait émaner le bref sans produire cet affidavit; que, par conséquent, le bref ayant été illégalement émané, l'action doit être renvoyée.

Subséquentement, le défendeur fit une motion par laquelle il demande, pour les mêmes raisons déjà mentionnées dans le susdit plaidoyer, que vû que le bref est nul à sa face même l'action du demandeur soit renvoyée.

Voici le jugement renvoyant la motion :

“ La Cour, après avoir entendu les parties sur la motion du défendeur demandant le débouté de l'action, avoir examiné la procédure et délibéré :

“ Attendu que le défendeur a soulevé par voie de contestation régulière le point invoqué dans la présente motion et que le litige est engagé sur cette contestation ;

“ La Cour, sans adjuger sur le mérite même de la question, renvoie la motion du défendeur, avec dépens, etc.”

Geoffrion, Rinfret & Dorion, avocats du demandeur.

Ouimet, Cornellier & Lajoie, avocats du défendeur.

(J. J. B.)

QUEEN'S BENCH DIVISION.

TORONTO, Feb. 9, 1885.

Before WILSON, C.J., ARMOUR, J., O'CONNOR, J.

CONWAY V. CANADIAN PACIFIC RAILWAY CO.

Railways and Railway Companies, 42 Vict., ch. 9, 46 Vict., ch. 24 (D)—*Liability to fence.*

HELD, O'CONNOR, J., dissenting, *that under the Consolidated Railway Act 1879, 42 Vict., ch. 9 (D), as amended by 46 Vict., ch. 24 (D), the railway company are not bound to fence except as against a "proprietor or tenant" in occupation, and that the company are not liable to a mere squatter for the killing of his horses without other negligence than their omission to fence as against him.*

The meaning of the terms "Proprietor," "Tenant," and "Occupant," considered.

The plaintiffs claim compensation from the defendants for two horses, the female plaintiff's property, which were killed by a construction train of the defendants on their railway in the township of Ferris, on the 22nd of June 1884. The claim was made upon the ground that the plaintiffs were the occupants of the east half of lot 29, in the 14th concession of that township, that the defendants were bound to fence the line of their road as against her, according to the 46 Vict., ch. 24, sec. 9 (D), and its sub-sections, which repealed and amended 42 Vict., ch. 9, sec. 16 (D), and its sub-sections, and that the company had not put up such fence.

The question was, whether the female plaintiff was an occupant of the land in question within the meaning of the Act.

The case was tried at the Fall Assizes, at Pembroke, by Cameron, C.J., without a jury.

It appeared that the defendants, while constructing their road in that locality, put up some shanties for the accommodation of their men, and for their own purposes, and one of these shanties was used as a boarding house, the one which the plaintiffs claimed. The person who first kept the boarding house gave it up, and the plaintiffs went into it, and kept the boarding house about March, 1883, up to about November of that year. The female plaintiff said she went on the land, in June 1882, and her house, she said, was on the east end of the lot between lots 28 and