Nova Scotia.] OTTAWA, Nov. 10, 1890.

KEARNEY v. OAKES.

Notice of action—Employee of railway department—Contractor for building Government Railway—Government Railway Act, 1881 (44 V., *c.* 25), *s.* 109.

Sec. 109 of the Government Railways Act, 1881, provides that "No action shall be brought against any officer, employee or servant of the Department (of Railways and Canals) for anything done by virtue of his office, service or employment, unless within three months after the act committed and upon one month's previous notice thereof in writing."

Held, reversing the judgment of the Supreme Court of Nova Scotia (20 N. S. Rep., 30), Ritchie, C.J., and Gwynne, J., dissenting, that a contractor with the Minister of Railways as representing the Crown, for the construction of a branch to the Intercolonial Railway, is not an employee of the department within the meaning of this section, and is not entitled to notice of an action to be brought for a trespass committed by him in the execution of his contract.

Appeal allowed with costs.

T. J. Wallace for the appellant.

R. L. Borden for the respondent.

Nova Scotia.] OTTAWA, Oct. 30, 1890.

THE HALIFAX STREET RAILWAY CO. v. JOYCE.

Appeal—Judgment on motion for new trial—R. S. C., c. 135, *s.* 24 (*d*)—*Construction of—Non-jury case.*

Sec. 24 (*d*) of the Supreme Court Act (R. S. C., c. 135), allowing an appeal "from the judgment on a motion for a new trial on the ground that the judge has not ruled according to law," does not give the Supreme Court jurisdiction in a case tried by a judge without a jury, but is applicable to jury causes only, the expression in such section "that the judge has not ruled according to law" referring to the directions given by a judge to a jury. Gwynne, J., *dubitante.*

Appeal quashed with costs.

Russell, Q.C., for the appellant.

Newcombe for the respondent.

New Brunswick.] OTTAWA, Nov. 10, 1890.

PHŒNIX INS. CO. v. MCGHEE.

Marine Insurance—Action for total loss—Right to recover for partial loss—Findings of jury.

A vessel was insured for a voyage from St. John's, Newfoundland, to a coal port in Cape Breton, and was stranded on the Cape Breton coast at a place where there were no inhabitants and no facilities for repairing any damage she may have suffered. The captain made his way through the woods to a place wher he could telegraph to the owners, from whom he received instructions to use every means to get the vessel off, as she was only half insured, and to communicate with the owners' agent at Sydney. In response to a telegram to the agent a tug was sent to the place where the vessel was, and the master of the tug, after examining the situation of the vessel, refused to attempt to pull her off the rocks. About a fortnight later one of the owners came to the place and caused a survey to be held on the vessel, and, after receiving the surveyor's report, he had her sold at auction, realizing only a trifling amount.

In an action on the insurance policy for a total loss, the only evidence as to the loss was that of the captain of the vessel, who stated what the tug had done, and swore that, in his opinion, the vessel could not have been got off the rocks. The jury found, in answer to questions submitted to them, that the vessel was a total loss in the position they considered she was in, and that a notice of abandonment would not have benefitted the underwriters. A verdict was given for the plaintiff, which the court in banc sustained.

Held, per Ritchie, C.J., and Strong, J., that the jury having found the vessel to be a total loss, and that finding being one that reasonable men might have arrived at on the evidence, it should not be disturbed by an appellate court.

Per Taschereau, Gwynne and Patterson, JJ., that as the vessel existed in specie for some time after she was stranded, and there being no satisfactory evidence that she could not have been got off and repaired, there was no total loss.