mortgagor; that condition 22 barred the remedy and not the right, and that the defendants were not entitled to subrogation.

Held, also, that the mortgagor was bound to make the proofs in such time that the sixty days would elapse before the expiration of the year limited for bringing the action and his remedy as to the other $500 of the policy.

Held, also, that as against the mortgagee the Directors of the Company were not entitled to retain the amount of the premium note under R.S.O., c. 167, s. 131; if it was paid they had no claim, and if not paid it was the default of the mortgagor, from the effects of which the mortgagee was protected by the mortgage clause.

Lash, Q.C., for the plaintiffs.

Wm. Kingston for the defendants.

Div'l Ct.] [Oct. 19.

LEMAY *v.* THE CANADIAN PACIFIC R.W. CO.

Railways and railway companies — Employer and employee—51 Vict. c. 29 (D), ss. 262 and 289—"Persons injured thereby"—Answers of jury—Negligence—Volenti non fit injuria.

Plaintiff was a switch foreman in the employ of the defendants, and in uncoupling cars got his feet caught in an unpacked frog and crushed by a car. In an action in which it was contended that the plaintiff, being an employee of the company, was not within the meaning of the statute 51 Vict., c. 29 (D), ss. 262 and 289, in which two of the questions submitted to the jury were: 1st, "Did the plaintiff, before the happening of the accident, have notice or knowledge; or ought he to have had notice or knowledge that the frog was not packed?" and the answer was, "We believe he did not have notice and should have had notice." And 4th, "Was the plaintiff guilty of contributory negligence?" Ans. "We do not believe that he was."

Held (affirming FALCONBRIDGE, J.), that the plaintiff came within the definition "Any person injured thereby," in s. 289, and that to leave track and switchmen out of the benefit of the Act would be to minimize its scope and violate one of the main causes of interpretation laid down by the Legislature, whereby all Acts are remedial and to be liberally construed (R.S.C., c. 1, s. 7, s-s. 36).

Held, also, that even if the answer to the first question was taken to mean that the defendant should have himself known that the frog was not packed, instead of the more obvious meaning that the company did not notify him as they should have done, that would not prevent him recovering, so long as he was not himself negligent, as proved by the fourth answer.

Thomas v. *Quartermaine*, 18 Q.B.D., at p. 697, referred to.

Held, also, that there was no evidence which would warrant such a finding as is defined by WILLS, J., in *Osborne* v. *London and South Western R. W. Co.*, 21 Q.B.D., at p. 224, as that the plaintiff freely and voluntarily, with full knowledge of the nature and extent of the risk he ran, impliedly agreed to incur it, and that the maxim *volenti non fit injuria* did not apply.

Shepley for the appeal.

Delamere and *Frank Keefer* contra.

FERGUSON, J.] [Oct. 25.

WOODHILL *et al v.* THOMAS *et al.*

Will—Devise—Period of distribution—Duration of annuity—Death of annuitant—Who entitled—Vested interest.

A Testator by his will provided as follows:—"I give and devise to my four daughters (naming them) an annuity of $120 per year each, to be paid one year after my decease, and to be for the period of their natural lives. Also to my two granddaughters (children of a deceased daughter) an annuity of $60 each, to be paid annually . . . which annuity will expire at the death of my last daughter. In the event of the death of any of my daughters, the annuity which she received during life to be equally divided amongst her children until the decease of my last daughter, share and share alike. In the event of the death of my last surviving daughter the annuities are immediately to cease and the amount of real and personal estate in the hands of the executors is to be equally divided among my grandchildren, provided they are not lazy spendthrifts, drunkards, worthless characters, or guilty of any act of immorality." One of the granddaughters named married and died, leaving an infant child, and her husband was appointed administrator of her estate.

Held, that each annuity given was to continue to the death of the last surviving daughter, and