

Province of Quebec.

QUEEN'S BENCH.

LACOSTE, C.J., BOSSÉ, BLANCHET }
HALL and WURTELE, JJ. }

CENTRAL VERMONT RY. CO. v. STANSTEAD ETC., FIRE INS. CO.

Negligence—Fire caused by sparks from locomotive—Communication of fire to other buildings—Subrogation—Proof of cause of fire.

Held, 1. It is negligence on the part of the employees of a railway company to use a locomotive in shunting cars on a heavy grade in exceptionally dry weather, with a strong wind blowing, and in the immediate vicinity of inflammable buildings.

2. Where it is established that sparks did escape in great volume from the locomotive, and that a fire was thereby caused, the railway company will not be relieved from responsibility for loss by proof that the locomotive was supplied with the most approved appliances for preventing the escape of sparks.

3. V. . . a fire is negligently caused by sparks from a locomotive, and it spreads beyond the building where it commenced, the railway company is obliged to indemnify the owners of the other buildings damaged or destroyed, unless some exemption from, or limitation to such liability be established. The fact that a high wind prevailed and aided in spreading the fire does not relieve the company from liability.

4. The insurance company which pays a loss caused by the negligence of a railway company is subrogated in the claim.

Greenshields, for appellant.

Hurd, for respondent.

Province of Nova Scotia.

SUPREME COURT.

Full Court.]

FANE ET AL. v. BANCROFT ET AL.

[March 8.]

Surety held liable for goods supplied—Mercantile agreement to be liberally construed—Pleading—Approval of act of agent by principal, where alleged, should be controverted in statement of defence.

Plaintiffs, doing business under the name and style of "The Comet Cycle Co.," appointed the firm of Bancroft & Bailey agents for the sale of their bicycles within a described area, on terms expressed in a written agreement entered into between the parties, but which, in consequence of Bailey, one of the members of the firm, being an infant, and under disability, was not executed in the firm name, but was signed by Bancroft, the other member, in his own name, and by H. M. Bailey, the father of the infant partner, as follows:—"I accept the terms of the above agreement, and hereby acknowledge the receipt of a copy of the same. Ernest M. Bancroft, H. M. Bailey."