

Q. B. Div.]

NOTES OF CANADIAN CASES.

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CONWAY v. C. P. R. Co.

*Railway—Fencing.*

*Held*, that under the Railway Act of 1879 as amended, the railway company are not bound to fence, except as against a proprietor or tenant, and that the company are not therefore liable to a mere squatter for the killing of his horses without other negligence than their omission to fence as against him.

*Osler*, Q.C., and *Gorman*, for plaintiff.

*H. Cameron*, Q.C., and *White*, contra.

LONGWAY v. AVISON.

*Action against J. P.—Immediate return of conviction.*

In an action against two justices of the peace to recover a penalty for not making an immediate return of a conviction had before them to the clerk of the peace.

*Held*, that it is a question for the jury whether under the circumstances of any particular case the return made is immediate.

*Held*, also, that in a *qui tam* action the finding of the jury upon such a question is conclusive.

Rose, J.]

TAYLOR v. McCULLOUGH.

*Assault—Prosecution—Civil action—Pleading.*

*Held*, on demurrer to plea, that a civil action for assault cannot proceed pending criminal prosecution for same.

Rose, J.]

BRICE v. MUNRO.

*Action for unpaid shares in foreign Co.—40 Vict. ch. 43, sec. 47 (D)—Non-issue of execution in Ontario—Pleading.*

In an action by a creditor of the Morton Dairy Co., Limited, against defendants, to recover the amount of unpaid shares in that company under 40 Vict. ch. 43, sec. 47 (D), the head office of the company being in Quebec, where the plaintiff's judgment against the company had been obtained and execution returned thereon unsatisfied, a demurrer to the statement of claim was allowed because it did not appear that an execution in Ontario against the company had been returned unsatisfied.

*Shepley*, for demurrer.

*Lash*, Q.C., contra.

Rose, J.]

REGINA v. SMITH.

*Patent of invention—35 Vict. ch. 26 (D)—Delivery of model.*

*Held*, that 35 Vict. ch. 26 (D), does not require delivery of a model prior to the issue of a patent of invention.

In this case, after the granting of the patent, the commissioner wrote to the applicant that the patent had been granted, and that it would be forwarded on receipt of the model, which was sent, and the patent was then forwarded.

*Semble*, that delivery of the model prior to the grant of the patent was dispensed with, merely requiring it to be sent before the patent could be forwarded.

*Gormully*, for demurrer.

*Foster*, contra.

Rose, J.]

REGINA v. LACKIE.

*Fraudulent removal of goods—11 Geo. II. ch. 19, sec. 4—Compelled to testify.*

The fraudulent removal of goods under 11 Geo. II. ch. 19, sec. 4 is a crime, and a conviction was therefore quashed with costs against the landlord, because the defendant had been compelled to give evidence in the prosecution.

*Shepley*, for motion.

*Watson*, contra.

RE WARIN.

*Water lots—Navigation—Easement—Prescription.*

A., lessee for years of west half (being practically vacant) of water lot 17 in Toronto Harbour, B., proprietor of east half of same lot on which exists a wharf and storehouse erected more than twenty years before suit, and so near the line dividing the half lots that vessels could not call at the west side of the wharf, where all the business had been done, without passing over the half lot of A., and partially occupying the same while lying at the wharf. B. and his successors had also laid up vessels at their wharf in winter, two or three abreast, occupying part of A's half lot nearly every year since the erection of the wharf, and about eighteen years before suit built on the wharf an elevator for receiving and shipping grain at the west side of the wharf.

In 1882 A. put up a notice warning persons