

from May, 1882, to February, 1887, when by reason of the auditors' report of alleged defalcations by him the plaintiff was dismissed from his office. The auditors' report showed two sums not accounted for, namely, \$1,400 and \$132.32. Subsequently a commissioner was appointed by the Lieutenant-Governor to examine into the matter, and after doing so he ascertained that as to the \$1,400, this was a mistake of the auditors, and on December, 1887, he made his report stating that all the township moneys were accounted for by defendant with the exception of the \$132.32, but having examined the plaintiff on oath at a meeting of the council at which defendant was present, the commissioner was satisfied with plaintiff's explanation as to \$125 of this sum, namely that it was interest on moneys of his own deposited with the township funds and so stated at the time, and made an addition to his report also so stating. In February following, the plaintiff wrote to a newspaper, stating that he was ready to pay over to the township any moneys either the council auditors or commissioner could show he owed, whereupon the defendant wrote to the paper, stating that the commissioner, apart from the mixing of moneys, had found plaintiff indebted to the township in the sum of \$125, and that the plaintiff had made several thousand dollars out of the township, and could therefore well afford to pay his shortage and still have some thousands to the good. In an action for libel,

Held, that although the matter discussed in the defendant's letter was one in which defendant was interested as a ratepayer and member of the council, and might give rise to questions of qualified privilege, still it was for the jury to say whether under the circumstances the language employed in the letter was within the privilege or whether it was in excess of what the occasion justified, and if in excess, they could properly draw the inference of malice.

In this case the jury having found for the plaintiff, the Court refused to interfere.

Lash, Q.C., for the plaintiff.

McCarthy, Q.C., for the defendant.

Divisional Court.]

BLAKE v. CANADIAN PACIFIC R.W. Co.

Railways—Negligence—Ringing bell or sounding whistle—Contributory negligence

In an action against defendants for an injury sustained by plaintiff by being run over by defendants' train at highway crossing, claiming that the statutory requirement as to ringing the bell or sounding the whistle had not been complied with,

Held, per ROSE and MACMAHON, JJ., that no negligence on defendants' part was shown, as the evidence disclosed that the statutory requirement had been complied with.

Per GALT, C. J., the plaintiff on the evidence was guilty of contributory negligence in not taking proper care in approaching the crossing.

Dr. Snelling, for the plaintiff.

G. T. Blackstock, for the defendants.

STREET J.]

HUNTINGDON v. ATTRILL.

Foreign judgment—Action for penalty.

The defendant was a shareholder and director of a joint stock company incorporated under the laws of the State of New York, having its head office in that State. The plaintiff, a creditor of the company for money loaned to the company, sued and recovered judgment against defendant for an alleged false certificate given by defendant while such director, as to the amount of paid up stock in the company, whereby as alleged the defendant, under certain statutes of the State of New York, became liable by way of penalty to all the debts of the company. In an action in this province on the judgment,

Held, that as the only cause of action which the plaintiff alleged was based on an offence committed by the defendant against the laws of New York State, and the only sum he sought to recover was the penalty fixed by the statute of the said State as the punishment for the offence, the judgment could not be recognized as creating a debt referable in this province.

Callanach and H. Symons, for the plaintiff.

McCarthy, Q.C., and *A. R. Creelman*, for the defendant.

[FERGUSON, J.]
Div'l Ct.

JAMES v. CITY OF LONDON INSURANCE CO.

Insurance—Over-valuation—Prior Insurance—Prior loss by fire—Ownership of goods—Warranty false and fraudulent representa-