

## The Legal News.

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### SUPREME COURT OF CANADA.

OTTAWA, June 13, 1890.

Quebec.]

**NORTH SHORE RAILWAY CO. v. McWILLIE et al.**

*Railway — Damages caused by sparks from locomotive — Responsibility of company — R.S.C. ch. 109, sec. 27—51 Vic., ch. 29, sec. 287—Limitation of actions for damages.*

A railway company by running a heavy train on an up grade when there was a strong wind, caused an unusual quantity of sparks to escape from the locomotive, which set fire to a barn situated in close proximity to the railway track.

*Held*, affirming the judgment of the Court of Queen's Bench, Province of Quebec, M.L.R., 5 Q.B. 122, that there was sufficient evidence of negligence to make the railway company liable for the damage caused by the fire.

*Per* Gwynne, J. That the "damage" referred to in sec. 27 of ch. 109, R.S.C., and sec. 287 of 51 Vic., ch. 29, is "damage" done by the railway itself, and not by reason of the default or neglect of the company running the railway, or of a company having running powers over it, and therefore the prescription of six months referred to in said sections is not available in an action like the present.

Appeal dismissed with costs.

*Brosseau* for appellant.

*Robinson, Q.C., and Geoffrion, Q.C.,* for respondent.

OTTAWA, June 13, 1890.

Quebec.]

**JONES v. FISHER.**

*Damage to land by construction of dam—Servitude—Arts. 503, 549, C.C., C.S.L.C. ch. 51—Improvement of water courses.*

Where a proprietor has, for the purpose of improving the value of a water power, built a dam over a water course running through

his property, and has not constructed any mill or manufactory in connection with the dam, he cannot, in an action of damages brought by a riparian proprietor whose land has been overflowed by reason of the construction of the dam, justify under the provisions of ch. 51, C.S.L.C.

Where the proprietor of a water course raises the level of the water by the construction of a dam, so as to overflow the land of other riparian owners, he cannot acquire by possession or prescription a right or title to the maintenance of the dam in question, Arts. 503, 549, C.C.

Appeal dismissed with costs.

*Lastlamme, Q.C.,* for appellant.

*Geoffrion, Q.C., and Duffy,* for respondent.

OTTAWA, June 12, 1890.

Quebec.]

**VENNER v. SUN LIFE INSURANCE CO.**

*Life Insurance — Unconditional policy — Misrepresentations — Effect of — Indication of payment — Return of premium — Additional parties to a suit — R.S.C. ch. 124, secs. 27 and 28 — Arts. 2487, 2488, 2585, C.C.*

An unconditional policy of life insurance was issued in favour of a third party, creditor of the assured, "upon the representations, agreements and stipulations" contained in the application for the policy signed by the assured, one of which was that "if any misrepresentation was made by the applicant, or untrue answers given by him to the medical examiner of the company, then in such a case the premiums paid would become forfeited and the policy be null and void." Upon the death of the assured, the person to whom the policy was made payable sued the company, and at the trial it was proved that the answers given by the applicant as to his health were untrue, the insurer's own medical attendant stating that assured's was a life not insurable.

*Held*, 1st, that the policy was thereby made void *ab initio*, and the insurer could invoke such nullity against the person in whose favour the policy was made payable, and was not obliged to return any part of the premium paid.