

respondent moved the court to dismiss the petition on the ground that the petitioners had not proceeded to trial within six months from the presentation of the petition. On the 26th of December the Court, MR. JUSTICE CARON presiding, dismissed the election petition without costs. On appeal to the Supreme Court of Canada, it was

Held, FOURNIER and HENRY, JJ., dissenting, that the Supreme Court of Canada had no jurisdiction to entertain an appeal from said judgment. Montmagny Election case, decided this term, followed.

Per HENRY, J., affirming the judgment of MR. JUSTICE CARON, that as the petitioners had not made an application supported by affidavit to enlarge the time for the commencement of the trial, as provided in s. 33, c. 9, R. S. C., the election petition was properly dismissed.

Appeal quashed with costs.

Martin and McDougall, Q.C., for appellant.

Bosse, Q.C., for respondent.

[Feb. 29.]

PROVIDENCE WASHINGTON INSURANCE CO.
v. GEROW.

Voyage insured—Port on western coast of South America—Deviation.

A marine policy insured the ship "Minnie H. Gerow" for a voyage from Melbourne, Australia, to Valparaiso for orders, thence to a loading port on the western coast of South America, and thence to a port of discharge in the United Kingdom.

The ship went from Valparaiso to Lobos, an island from twenty-five to forty miles off the western coast of South America, and after sailing from there was lost. In an action on the policy

Held, (reversing the judgment of the court below) that, whether or not Lobos was a port on the western coast of South America within the meaning of the policy, was a fact to be determined by the jury, and the judge not having left it to the jury, a new trial was ordered on the ground of misdirection.

Straton, for the appellants.

Weldon, Q.C., and *C. A. Palmer*, for the respondents.

CITY OF MONTREAL v. LABELLE.

Damages—Art. 1056, C. C.—Solatium—Cross appeal, no notice of.

In an action of damages brought against the corporation of the city of Montreal by Z. L. *et al.*, the descendant relations of L., who was killed while driving down, St. Sulpice street, alleged to have been at the time of the accident in a bad state of repair, by being thrown from the sleigh on which he was seated, against the wall of a building, the learned judge, before whom the case was tried without a jury, granted Z. L. *et al.* \$1,000 damages, on the ground that they were entitled to said sum by way of solatium for the bereavement suffered on account of the premature death of their father.

Held, reversing the judgments appealed from, that the judgment could not be affirmed on the ground of solatium, and as the respondents had not filed a cross appeal to sustain the verdict on the ground that there was a sufficient evidence of pecuniary loss for which compensation may be claimed, Z. L. *et al.*'s action must be dismissed with costs.

Canadian Pacific Railway Co. v. Robinson, 14 Can. S. C. R. 105, followed.

Appeal allowed with costs.

Mathieu, for appellants.

Stephens, for respondents.

[Feb. 28.]

SNOWBALL v. RITCHIE.

Boundary—Dispute as to—Reference to Surveyors—Duties of surveyors under reference.

R., who held a license from the Government of New Brunswick to cut timber on certain Crown lands, claimed that S., licensee of the adjoining lot, was cutting timber on his grant, and he issued a writ of replevin for some 800 logs alleged to be so cut by S. The replevin suit was settled by an agreement between the parties to leave the matter to surveyors to establish the line between the two lots, the agreement providing that "the lines of the land held under said license (of R.) shall be surveyed and established by (naming the surveyors) and the stumps counted," etc.

Held, reversing the judgment of the court below, that under this agreement the survey-