

[June 14.]

MILLER v. STEPHENSON.

*Goods sold and delivered—Evidence—To whom was credit given—Direction to jury—Withdrawal of evidence from jury—New trial.*

In an action against McK. and M. for goods sold and delivered, the plaintiff swore that he had sold the goods to the defendants, and on their credit, and his evidence was corroborated by the defendant McK. The defence showed that the goods were charged in plaintiff's books to C. McK. & Co. (the defendant McK. being a member of both firms), and credited the same way in C. McK. & Co.'s books, and that the notes of C. McK. & Co. were taken in payment, and it was claimed that the sale of the goods was to C. McK. & Co.

The trial judge called the attention of the jury to the state of the entries in the books of the plaintiff and of C. McK. & Co., and to the taking of the notes, and to all the evidence relied on by the defence, and he left it entirely to the jury to say as to whom credit was given for the goods.

*Held*, affirming the judgment of the Supreme Court of New Brunswick, that the case was properly left to the jury, and a new trial was refused.

Appeal dismissed with costs.

*Weldon*, Q.C., and *C. A. Palmer* for appellant.

*McLeod*, Q.C., and *A. S. White* for respondent.

[June 14.]

CANADIAN PACIFIC RAILWAY v. WESTERN UNION TELEGRAPH CO.

*Telegraph Company—Incorporated in United States—Power to operate line in Canada—Sole right of operating over line of Canadian railway—Agreement therefor—Violation of railway charter—Restraint of trade.*

In 1869 the European and North American Railway Co. entered into an agreement with the Western Union Telegraph Co., a company incorporated in the State of New York with the right of constructing lines of telegraph and operating the same in the State, by which agreement the telegraph company was granted the exclusive right of constructing and operating for 99 years a line of telegraph over the road of the railway company from Boston, Mass., to St.

John, N.B. In 1888 the latter road was operated by the New Brunswick Railway Co. under lease from the St. John and Maine Railway Co., and the Canadian Pacific Railway in that year undertook to establish a telegraph line from Montreal to St. John, and run the same over that portion of the road controlled by the Western Union lying between Vanceboro', Maine, and St. John. The Supreme Court of New Brunswick sitting in equity grant aed perpetual injunction restraining the Canada Pacific Railway and New Brunswick Railway Co. from interfering with their exclusive right in building the said line. On appeal to the Supreme Court of Canada from the decree ordering the issue of such injunction,

*Held*, Gwynne, J., dissenting, that the fact of the company being a foreign corporation, empowered by its charter to construct and operate telegraph lines in a foreign country does not prevent it from enforcing the agreement for an exclusive right of operating such lines in Canada, and the injunction should be maintained.

Per Gwynne, J.—That such a power vested in a foreign corporation might be very prejudicial to the interest of the inhabitants of Canada, and should not be recognized nor given effect to in the courts of this country.

*Held*, also, that the agreement with the telegraph company did not create a monopoly in favour of that company, and was not an agreement in restraint of trade and commerce.

Appeal dismissed with costs.

*Weldon*, Q.C., and *Ferguson* for the appellants.

*Hector Cameron*, Q.C., and *Barker*, Q.C., for the respondents.

[June 14.]

WALKEN v. HIGGINS.

*Libel—Innuendo—Damages—Unnecessary appeal—New trial.*

W., a judge of the Supreme Court of British Columbia, and formerly premier of the province, brought an action against H., editor of a newspaper published in Victoria, B.C., for publishing in said paper the following article, alleged by W. to be libellous, copied from an Ottawa paper:

"Extract from *The Daily British Colonist*, published at Victoria, B.C., on the 20th day of November, 1885: