Ontario.] OTTAWA, March 19, 1889.

ROBERTSON v. WIGLE.—THE ST. MAGNUS.

Maritime Court—Collision—Damages—Party in fault—Answering Signals.

The owners of the tug "B. H." sued the owners of the steam propellor St. M. for damages occasioned by the tug being run down by the propellor in the River Detroit.

Held, reversing the judgment of the Maritime Court of Ontario, that as the evidence showed the master of the tug to have misunderstood the signals of the propellor, and to have directed his vessel on a wrong course when the two were in close proximity, the owners of the propellor were not liable, and the petition in the Maritime Court should be dismissed.

Appeal allowed with costs.

MacKelcan, Q. C., and *Lash, Q. C.*, for the appellants.

Christopher Robinson, Q.C., and *S. White*, for the respondents.

New Brunswick.]

MARITIME BANK v. TROOP.

Winding-up Act—R. S. C. c. 129, s. 57—Double Liability—Set off.

Sec. 57 of the winding-up Act R. S. C. c. 129 provides that "the law of set-off as administered by the Courts, whether of law or equity, shall apply to all claims upon the estate of the Company, and to all proceedings for the recovery of debts due or accruing due to the Company at the commencement of the winding-up, in the same manner, and to the same extent, as if the business of the Company was not being wound up under this Act."

Held, reversing the judgment of the Supreme Court of New Brunswick, that this section does not give a right to a contributory to set off an independent debt owed to him by a Company against calls made in the course of winding-up proceedings either for capital or double liability.

Appeal allowed with costs.

Barker, Q. C., for the appellants.

J. A. Van Wart, for the respondent.

*COURT OF QUEEN'S BENCH—MONTREAL.**

Prescription—Art. 2261, C. C.—Description of property—"West side" of river—Change of course.

Held:—1. That a claim for the value of wood wrongfully cut and carried away from plaintiff's land, is not prescribed by two years, the prescription of C. C. 2261, sec. 2, not being applicable to such claim.

2. That where a deed conveyed all the land of lot 10 to be found on "the west side of the river" which runs through the lot, all the land on the west side according to the general direction of the river through the lot was included, although in consequence of a bend in the stream and a change of course from south to north, a portion of such land lay geographically on the east side of the curve.—*Eaton et al. & Murphy et al.*, Dorion, C. J., Monk, Tessier, Cross, Baby, J J., Dec. 9, 1884.

Procédure—Frais—C. P. C. 453, 478.

Jugé:—Que le non-paiement des frais incidents, même d'appel, dans une cause ne peut pas suspendre la continuation de cette même cause, lorsque le tribunal qui a condamné aux frais n'a pas imposé le paiement comme condition préalable à la continuation.—*Robinson* v. *C. P. R. Co.*, Tessier, Cross, Church, Doherty, J J., 19 Sept., 1888.

Railway—Animals straying on the track—Responsibility of railway company—Cattle guards.

Held:—1. That when the employees in charge of the trains of a railway company discover animals upon the track they are bound to exercise proper care and prudence to prevent injury to them, and a mere slackening of speed will not be considered sufficient to relieve them from responsibility.

2. That no requisition or writing was necessary to put defendants in default for non-compliance with Consolidated Railway Act, 1879, sec. 16, as amended by 46 Vic. cap. 24, sec. 9.

3. That a railway company is liable for animals or cattle killed or injured by getting on the track of the railway in consequence of the absence of cattle guards, without

* To appear in Montreal Law Reports, 4 Q. B.