

Divisional Court.]

[Oct. 8.]

CULL v. ROBERTS.

*Conditional sale—Action for price—Defence of diminution of value.*

Where there has been a conditional sale of a chattel, and an action is brought for the price, it may be pleaded in defence that there is a diminution in value because the article is not as represented.

*Mabe*, for the defendants.

*J. Moss*, for the plaintiff.

FERGUSON, J.]

[Oct. 18.]

RAINVILLE v. GRAND TRUNK R.W. CO.

*Railway—Negligence—Sparks from engine—Circumstantial evidence.*

Action for damages for negligence resulting in burning of the plaintiff's property, by sparks from defendants' engine. There was evidence that there was dry and inflammable material on the property of the defendant company, and that sparks from the engine might have fallen upon this and ignited it, and that fire may have so spread to the plaintiff's property.

*Held*, that proof that the fire was communicated by sparks or cinders from the defendants' engine may be by circumstantial evidence, and there were here relevant circumstances given in evidence fit to be submitted to the jury, and motion for non-suit refused.

*Cowan*, for the plaintiff.

*Osler, Q.C.*, for the defendants.

BOVD, C.]

[Oct. 21.]

RICE v. CORPORATION OF WHITEBY.

*Municipal corporations—Highways—Obstruction—Liability.*

Where an object is left on the highway, which is calculated to frighten horses, and by which a horse is frightened, and an accident results, and where the municipality though having notice, have taken no precautions to obviate danger, by placing lights or stationing signalmen to warn travellers, the municipality is liable, in the absence of contributory negligence; but entitled to be indemnified by the party who placed the obstruction, and left it unguarded and unlighted.

*W. R. Riddell*, for the plaintiff.

*J. E. Farewell, Q.C.*, for the corporation defendant.

*C. J. Holman*, for the third party.