

Robson, J.]

[October 1.

SMITH v. CANADA CYCLE AND MOTOR CO.

*Pleading—Denials of allegations of fact in the statement of claim—King's Bench Act, rule 290, as re-enacted by 7 and 8 Edw. VII. c. 11, s. 4.*

To an action charging negligence on the part of the defendants in leaving open and unguarded a trap-door in their premises through which the plaintiff, while lawfully there, fell and was injured, it is proper for defendants to plead, under rule 290 of King's Bench Act, as re-enacted by 7 and 8 Edw. VII. c. 11, s. 4., denying in separate paragraphs the leaving of the trap-door open or unguarded, and that it was by reason of its being open or unguarded that the plaintiff fell into it, if (which was not admitted) he did in fact fall into it, and setting up in other paragraphs that, if the trap-door was open (which was denied) it was sufficiently guarded by a rail and was not dangerous, that there was no negligence on the part of the defendants and that the plaintiff did not exercise ordinary care or caution in the matter.

Form of defence in Bullen and Leake, 6th ed., at p. 889, referred to.

*Chandler*, for plaintiff. *St. John*, for defendants.

Robson, J.]

[October 3.

NATIONAL TRUST CO. v. PROULX.

*Devolution of estates—Death of administrator—Unadministered estate of intestate—Appointment of administrator of estate of deceased administrator—Costs.*

L., the owner of the land question, died intestate. His widow was appointed administratrix of his estate. She died without dealing in any way with the land and the plaintiffs were appointed administrators of her estate.

*Held*, that the plaintiffs had no title to the land, and that a grant of letters of administration of the unadministered estate of L. would be necessary, followed by a conveyance from the new administrator to the plaintiffs, before they could get title. The defendant was only allowed the costs of a demurrer, as the point of law was apparent on the pleadings and he should have raised it by demurrer instead of going to trial in the ordinary way.

*Blackwood* and *Beaupre*, for plaintiffs. *Towers*, for defendant.