

for the balance due to him by Charlebois on his fencing contract. This judgment, however, was not paid till 1898, and then it was paid without interest.

*Held*, 1. The agreement between the plaintiffs and defendants should be treated as if Charlebois had been mentioned in it instead of the company, and should be rectified if necessary.

2. By accepting the judgment against the company, Preston had put it out of his power to insist on getting further estimates from the engineer for his work and it should be considered, as between Preston and the plaintiffs, that he was thus paid the balance due on the contract, and the plaintiffs could then have brought their action: *Atway v. Huldips*, 2 Mod. 266; *Pillrow v. Pillrow*, 5 C.B. 439, and were therefore entitled to interest for six years and not merely from 1898, when Preston was actually paid.

3. Under 3 & 4 Wm. IV., c. 42, s. 28, the plaintiffs were entitled to interest, as the money was payable by virtue of a written instrument at a certain time within the meaning of the statute: *Duncombe v. Brighton Club Co.*, L.R. 10 Q.B. 371.

4. The defendant Musson was bound by Preston's action in accepting the judgment just as he would have been by a payment made by Charlebois to Preston.

*Ewart*, Q.C., and *Wilson*, for plaintiffs. *Elliott*, for defendants.

## Province of British Columbia.

### COURT OF CRIMINAL APPEAL.

REGINA V. UNION COLLIERY COMPANY.

[May 8.

*Criminal law—Manslaughter—Grievous bodily injury—Indictment of corporation—Punishment—Criminal Code, secs. 191, 192, 213, 252, 639 and 713.*

The defendants, a corporation, were indicted for that they unlawfully neglected, without lawful excuse, to take reasonable precautions and to use reasonable care in maintaining a bridge forming part of their railway, which was used for hauling coal and carrying passengers, and that on the 17th August, 1898, a locomotive engine and several cars then being run along said railway and across said bridge, owing to the rotten state of the timbers of the bridge, were precipitated into the valley underneath, thereby causing the death of certain persons.

The defendants were found guilty and a fine of \$5,000 was inflicted by WALKEM, J., at the trial.

*Held*, per McCOLL, C.J., and MARTIN, J., on appeal, affirming the conviction, that such an indictment will lie against a corporation under s. 252 of the Code.