

rôle d'enquête, for the purpose of allowing the plaintiff to complete his answers to interrogatories *sur faits et articles*, where the interrogatories have not been answered properly at first.

This appeal arose from the following circumstances:—The action was brought under a transfer of an obligation. The plea was, want of consideration, except to the extent of £90. On the 21st June, 1864, the Court, on motion of the defendants, permitted them to examine the plaintiff on *faits et articles* on the 25th June. On that day the plaintiff stated that he was engaged with another suit between himself and one of the defendants, and fearing to absent himself too long from this other case, he contented himself with answering the first two interrogatories, and then to the other 36 interrogatories, the following answer was entered at his request:—"I have no other reply to make but that which I made to the preceding (second) question." Subsequently, the defendants moved that these interrogatories be taken as admitted, inasmuch as the plaintiff had not answered them as he was bound to do. On the 30th Sept., 1864, Mr. Justice Berthelot ordered that the case be discharged from *délibéré*, and inscribed on the *rôle d'enquête*, in order that the plaintiff might answer the interrogatories following the second. The case was then re-heard, and on the 31st Oct., 1864, Mr. Justice Berthelot rendered a final judgment in plaintiff's favour. The defendants had the judgment reviewed, and it was confirmed by Smith and Berthelot, JJ.; Monk, J., dissenting on the ground that the Judge had no power to discharge the case from *délibéré*, for the purpose of enabling the plaintiff to come up and complete his answers. The defendants then appealed.

MONDELET, J., dissenting, said he concurred with Mr. Justice Monk in thinking that the Judge, when he discharged the *délibéré*, had exercised a power which the Court did not possess. There was manifest error in the judgment of the Court below, and it should be reversed.

DUVAL, C. J., was of opinion that the decision of the Superior Court was correct, and in accordance with law, and must be confirmed.

Aylwin and Drummond, JJ., concurred.

Judgment confirmed, Mondelet, J., dissenting. Moreau, Ouimet & Chapeleau, for Appellants: Edmund Barnard, for Respondent.

MONTREAL AND CHAMPLAIN RAILROAD Co. (defendants in the Court below,) Appellants; and PERRAS, (plaintiff in the Court below,) Respondent.

Railway Company held not liable for animals killed, the accident having occurred when the fences were down during the winter.

This was an appeal from a judgment of the Circuit Court, Montreal, condemning the defendants to pay the plaintiff the value of certain animals killed on the track. The action was brought by a farmer, of the parish of Laprairie, to recover the sum of \$120, viz., \$70, the value of a mare, and \$50, the value of a colt, killed on the railway track, on the 16th Dec., 1862. It was alleged by the plaintiff that the company were bound to keep the fences on each side of the line in good repair; but that owing to the fences being down, the animals above mentioned got on the track and were killed by the cars. The defendants pleaded that in December, when the accident happened, all the fences had been taken down, to prevent the accumulation of snow on the road; and consequently the plaintiff should not have allowed his animals to go at large. The fences were taken down in accordance with an old established custom. It was further stated that there was nothing to show that the animals were killed by the cars. Loranger, J., having rendered judgment in favour of the plaintiff, the defendants appealed.

DRUMMOND, J., dissenting, was of opinion that the judgment should be confirmed. The enclosures had been taken down, and the company were therefore liable for the accident.

MONDELET, J., rendering the judgment of the Court, said that the plaintiff himself was the cause of the accident, and the company could not be held accountable. The judgment must be reversed.

Duval, C. J., Aylwin and Meredith, JJ., concurred.

Judgment reversed, Drummond, J., dissenting.

Cartier, Pominville & Bétournay, for Appellants; Médéric Lanctot, for Respondent.