

Com. Pleas.]

NOTES OF CANADIAN CASES.

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the council against all expenses in the matter. It appeared also that the applicant had some buildings on his lot adjoining the road which were used by farmers, and which would be cut off by the closing of the road.

Held, by ROSE, J., that under the circumstances the by-law must be quashed with costs. *Quære*, whether there is any power to close a road of this kind running through more than one municipality.

MacLennan, Q.C., and *Metcalfe*, for the applicant.
Aylesworth and *Deacon*, contra.

Rose, J.]

REGINA V. MACKENZIE.

Indian Act—Conviction for selling liquor—Imprisonment in default of payment of fine—Sale under medical sanction—Amendment.

A conviction under the Indian Act for giving intoxicating liquor to an Indian imposed a fine and costs, and, in default of immediate payment, imprisonment.

Held, that the conviction must be quashed, for that while sec. 9 imposes as punishment for the offence fine or imprisonment, or imprisonment or fine, it does not authorize a fine, and in default of payment, imprisonment.

Held, also, that the conviction was invalid, because it did not negative that the liquor was not made use of under the sanction of a medical man, or under the direction of a minister of religion.

Held, also, that a conviction cannot be amended after the return of a writ of certiorari.

V. Mackenzie, Q.C., for the applicant.
Holman, contra.

Rose, J.]

BRODER V. THE NORTHERN RAILWAY CO.

Railways—Carriage beyond defendants' line—Loss by fire—Carriers—Warehousemen—Negligence—Proximate cause of damage.

Four car-loads of flour were delivered to the defendants at Newmarket, Ont., to be carried to Chatham, N.B., under a special contract which provided that defendants were not to be liable for any delay occasioned by want of opportunity to forward goods addressed to

consignees beyond the places where the defendants had stations; that the goods were to be forwarded to their destination by public carriers or otherwise as opportunity might offer; that the goods, pending communication with the consignees, remained on the defendants' premises at the owner's risk; that the delivery of the goods by the defendants would be considered complete, and their responsibility to have ceased when they had notified the carriers to whom they were entitled to deliver them that they were prepared to deliver over the goods for further conveyance; and that they were not to be responsible for any loss, damage, etc., after such notice. It also provided that the defendants were not to be liable for damage occasioned by fire. It appeared that the defendants' line did not extend beyond Toronto, and that the goods were to be forwarded to their destination by the G. T. R.; that on their arrival the goods were placed in the defendants' freight sheds, and notices addressed to the consignee sent to the consignor at Newmarket, and also to the G. T. R.; that defendants were prepared to deliver over the goods for further conveyance; and that after such notice, while the goods were in defendants' freight sheds, they were destroyed by fire without any negligence on the defendants' part.

Held, that the defendants were not liable as carriers because they had expressly limited their liability as such; nor as warehousemen for no negligence was shewn, the only negligence suggested being that they did not furnish cars for transhipment before the fire, but that such objection was not tenable; and, even if this could constitute negligence, *quære*, whether the recovery could be for more than nominal damage, *i.e.*, whether the loss by fire was the damage naturally arising from such negligence.

Falconbridge, for the plaintiff.

G. D. Boulton, Q.C., for the defendants.