

REPORTS AND NOTES OF CASES

Province of Ontario.

COURT OF APPEAL.

From STREET, J.]

[March 2.

WASHINGTON v. GRAND TRUNK RAILWAY COMPANY.

Railways—Negligence—Packing of railway frogs—Workmen's Compensation for Injuries Act—55 Vict., c. 30, s. 5, sub-secs. 2, 3 (O.). Statutes—Construction—Division into sections—51 Vict., c. 29, s. 262, sub-secs. 3, 4 (D.).

Sub-sec. 3, of s. 262 of the Railway Act, 51 Vict., c. 29 (D.), provides that the spaces behind and in front of every railway frog shall be filled with packing. Sub-sec. 4 of the same section provides that the spaces between any wing rail and any railway frog, and between any guard rail and track rail shall be filled with packing, and this sub-section ends with a proviso that the Railway Committee may allow "such filling" to be left out during the winter months.

Held, that this proviso applied to both sub-sections and that permission having been given by the Railway Committee to frogs being left unpacked, the defendants were not liable for an accident resulting from that cause.

The provisions of sub-secs. 2, 3 of s. 5 of the Workmen's Compensation for Injuries Act, 55 Vict., c. 30 (O.), as to packing railway frogs, are not binding upon railways under the legislative control of the Dominion.

Judgment of STREET, J., reversed.

McCarthy, Q.C., for the appellants.

G. Lynch-Staunton, for the respondent.

From Divisional Court.]

[March 2.

ROSE v. MCLEAN PUBLISHING CO.

Trade name—Geographical designation—"The Canadian Bookseller and Library Journal"—"The Canada Bookseller and Stationer."

The use of a geographical name in a secondary sense as part of the title identifying a mercantile journal and not as merely descriptive of the place where the journal is published, will be protected.

The use of the name *The Canada Bookseller and Stationer* was restrained as conflicting with the name *The Canadian Bookseller and Library Journal*.

Judgment of a Divisional Court, 27 O.R. 325, reversed, MacLennan, J.A., dissenting.

G. Kappeler, and J. Bicknell, for the appellants.

Robinson, Q.C., and LeVesconte, for the respondents.

From BOYD, C.]

[March 2.

VAN TASSELL v. FREDERICK.

Will—Construction—Estate—Defeasible fee—"Die without issue."

This was an appeal by the plaintiff from the judgment of BOYD, C., reported 27 C. 646, and was argued before BURTON, OSLER and MACLENNAN, JJ.A., on the 26th of January, 1897.