

[Que.]

MUTUAL LIFE ASS. CO. v. GIGUÈRE.

[May 15.]

*Life insurance—Delivery of policy—Payment of premium—Evidence.*

The production from the custody of representatives of the insured of a policy of life insurance, raises a prima facie presumption that it was duly delivered and the premium paid, but where the consideration of the policy is therein declared to be the payment of the first premium upon the delivery of the policy, parol testimony may be adduced to shew that, as a matter of fact, the premium was not so paid and that the delivery of the policy to the person therein named as the insured was merely provisional and conditional.

The reception of such proof cannot, under the circumstances, be considered as the admission of oral testimony in contradiction of a written instrument, and, in the provinces of Quebec in commercial matters, such evidence is admissible under the provisions of article 1233 of the Civil Code. Appeal allowed with costs.

Garrow, K.C., and Lane, for appellant. Chase-Casgrain, K.C., and Alex. Taschereau, for respondent.

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EXCHEQUER COURT.

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Burbidge, J.]

GRIFFIN v. TORONTO RAILWAY COMPANY.

[April 21.]

*Patent of invention—Infringement—Improvements in truing up car wheels—Combination—Invention—Utility.*

The plaintiffs were owners of Canadian letters patent numbered 63,608 for improved abrading shoes for truing up car wheels. The improvement consisted in the use of an abrading shoe in which there were a number of pockets filled with abrading material. Between the pockets were spaces or cavities to receive the material worn from the wheel, the spaces having openings in them to facilitate the discharge of such material. Prior to the alleged invention abrading shoes had been used in which there were similar pockets filled with abrading material; and other shoes had been used in which there were similar spaces or cavities. The plaintiff's abrading shoe, however, was the first in which these two features were combined, or used together.

*Held*, that there was invention in the idea or conception of combining these two features for the purpose of truing up car wheels, and that the invention was useful.

J. G. Ridout, for plaintiff. W. Cassels, K.C., for defendant, Power.