As to the incidental demand, Bramley had a right to be indemnified.

(RAMSAY, J., took no part in the judgment.)

Monk & Butler for Mechanics Bank.

Coursol, Girouard, Wurtele & Sexton for Sincennes-McNaughton Line.

Mathieu & Gagnon for Bramley.

MONTREAL, Sept. 22, 1879.

CENTRAL VERMONT R. R. Co. (defts. below), appellants; and PAQUETTE (plff. below), respondent.

Railway—Evidence of ownership—Pleading.

This was an appeal from a judgment condemning the appellants to pay $100 damages, for the value of some cattle which had been killed by a passing train, on the appellants' line of railway, between Farnham and Waterloo. The plea was to the effect that the cattle were killed in consequence of the negligence of the respondent himself. There was also a *défense en fait.*

The Court below, Sicotte, J., held that the appellants' line of railway was not sufficiently fenced in, and that the accident occurred in consequence of this neglect. Judgment was, therefore, given for $100, the proved value of the cattle killed.

In appeal, the Company submitted that it was not proved that they owned, worked, or controlled the road which was known as the Stanstead, Shefford & Chambly Railroad, and that in the absence of written proof, such as a lease or agreement, some verbal testimony should have been adduced.

Sir A. A. DORION, C. J., considered that the judgment was correct on the merits of the contestation in the Court below. As to the point which had been raised in appeal, either the Company passes over the road as a trespasser, or it has a right to do so, and that right it derives from the real proprietors. In either case it could not be relieved from responsibility for accidents.

MONK, J., remarked that one of the difficulties, to his mind, was that the appellants had pleaded a peremptory exception, and this exception took up as it were the *fait et cause* of the other railroad company, the proprietors of this road. It alleged that the fences were good, thereby vindicating as it were the state of things.

Judgment confirmed.

Davidson, Monk & Cross for appellants.

Beique & Choquet for respondent.

POITRAS (plff. below), Appellant; and BERGER (deft. below), Respondent.

Lease—Right of property in leased premises—Art. 1625 C. C.—Emphyteutic lease.

The action was brought to recover $200 rent, and to obtain the resiliation of a nine years' lease from the appellant to Isabella Moir, who had assigned her rights thereunder to the respondent. Isabella Moir having since become insolvent, her assignee, Lajoie, was *mis en cause.*

The respondent pleaded that by a deed passed 27th December, 1877, the appellant, having renounced her usufruct in the property leased, had ceased to have any right or interest therein.

The Court below (Rainville, J.) maintained the plea, the judgment being as follows:—

"La Cour, etc.

"Considérant que la demanderesse en cette cause, n'était qu'usufruitière de la propriété louée en question en cette cause;

"Considérant que la dite demanderesse, par acte du 27 Décembre, 1877, a renoncé à son usufruit de la dite propriété en faveur des nus-propriétaires et grevés de substitution, et à son droit au bail en question;

"Considérant que par suite de la dite renonciation, le dit usufruit s'est trouvé éteint et réuni à la nue-propriété, et qu'en conséquence la dite demanderesse est maintenant sans droit dans le bail qu'elle avait consenti à Isabella Moir, et en vertu duquel la présente action est intentée;

"Considérant qu'un acte de cession ou d'abandon d'usufruit n'a pas besoin d'être signifié au locataire pour saisir l'acquéreur ou le nu-propriétaire;

"Maintient l'exception en second lieu produite par le défendeur à l'encontre de l'action de la demanderesse, et déboute la dite demanderesse de son action, le tout avec dépens."

MONK, J., dissenting, thought that the judgment was correct. The appellant, having no possession or right whatever in the property leased, brought an action to set aside her lease to Isabella Moir, and also to annul the transfer