

person who should without any title whatever, and as a mere trespasser, occupy any part of a section or lot upon which the railway has been constructed, or a part of which has been taken possession of by the company for the purpose of constructing a railway thereon, and that, too, when such person would not be compellable by, nor could he compel, his adjoining owner to make, keep up and repair a just proportion of the fence which marks the boundary between them.

The plaintiff was a person precisely in this position, and so was Worthington, to whom she at one time paid rent.

I think, therefore, that the company were not bound to fence as against her, and that the order *nisi* must be discharged with costs. See *Douglas v. London and Northwestern R. W. Co.*, 3 K. & J. 173; *Re Evans*, 42 L. J. Chy. 357.

Order *nisi* discharged, with costs.

THE RIEL CASE.

An opinion by Mr. D. Macmaster, Q.C., on the case of Louis Riel, now under sentence of death, has been made public, in which a new point of general interest has been raised. The learned counsel says:—

The prisoner was indicted at Regina, in the Northwest Territories of Canada:

1. For levying war against Her Majesty "in the said Northwest territories of Canada, and within this realm," while a subject of Her Majesty, and

2. For levying war while living in Canada and enjoying Her Majesty's protection.

He was tried by a stipendiary magistrate, a justice of the peace, and a jury of six, under the provision of "The Northwest Territories Act, 1880," convicted, and sentenced to be hanged.

My legal opinion is now asked:—

1. Upon the competency of the court that tried him, and

2. Upon the legality of the conviction and sentence.

I.

The court which tried the prisoners was, in my view, legally—though exceptionally—constituted in virtue of special delegations of legislative power from the Imperial to the Canadian Parliament.

II.

The indictment is framed under the statute 25 Edward III., cap. 2, which has never been formally re-enacted as a law of the Dominion of Canada. How far it may be in force in the Northwest Territories as part of the common law is open to some question, owing to the restricted language of the statute of Edward.

The indictment is for levying war against Her Majesty "in the Northwest Territories of Canada and within this realm." The statute 25 Edward III., is, as it expresses, "A declaration which offences shall be adjudged treason," and among these is, "If a man do levy war against our Lord the King in his realm."

Are the Northwest territories a part of the realm within the meaning of the statute of Edward? Referring to this statute Sir Matthew Hale says that "Ireland, though part of the dominion of the crown of England, yet is no part of the realm of England." . . . "The like is to be said for Scotland, even while it was under the power of the crown of England, as it was in some times of Edward I. and some part of the time of Edward III." The Court of Queen's Bench of Ireland has decided that the same statute of 25 Edward III. only became applicable to Ireland by the provisions of 10 Henry VII., cap. 10, passed by the Irish Parliament, introducing it into Ireland. The House of Lords subsequently confirmed the decision of the Irish court. Sir M. Hale thus discusses the clause in 25 Edward III.:—"Now as to this clause of high treason: *Ow si home levy guerre contre notre Seigneur le Roy en son realme.*"

"To make a treason within this clause of this statute there must be three things concurring:—

"1. It must be a *levying of war.*

"2. It must be a *levying of war against the king.*

"3. It must be a *levying of war against the king in his realm.*"

The italics are used by the learned jurist. After stating that Ireland and Scotland are not within "the realm," as before stated, he continues: "And the same that is said of Ireland may be said in all particulars of the Isle of Man, Jersey, Guernsey, Sark and