

ers is not the act of the Government and a petition of right against the Crown is therefore not a proper remedy in this case. Any instructions by the Minister regarding the liability of these barges to pay the pilotage fees would be merely an opinion regarding the interpretation of the Pilotage Act.

*McLean*, K.C., for plaintiff. *Coster*, K.C., and *Skinner*, K.C., for defendant.

## Province of Manitoba.

### KING'S BENCH.

Full Court.]

[Feb. 10.]

HINMAN v. WINNIPEG STREET RY. CO.

*Negligence—Electric street railway—Trolley wires having telephone wires crossing above.*

The plaintiff's horse, being driven along a street in the City of Winnipeg during a thunderstorm, was killed by coming into contact with a wire of the defendants, the Bell Telephone Company, which had just been blown down and had fallen across a trolley wire of the Street Railway Company and so had become charged with a very strong current of electricity. The plaintiff obtained a verdict in the County Court for \$200 against both companies, each to pay \$100, and the defendants appealed to this Court, contending that there was no evidence of negligence on its part. Evidence had been given to shew that it was possible to guard against such accidents by fixing a guard or cradle wire over the trolley wire whenever it is crossed by another wire so that, if the latter should break, it would not come into contact with the trolley wire, and such had been done at one specially dangerous place in Ottawa, but it was not shewn that such a device was in use elsewhere in Canada, although it was in quite common use in the United States.

*Held*, per DUBUC, C.J., that defendants were not bound to anticipate such an accident as had happened or to provide against the possibility of it, and that there was no evidence of negligence on the part of that company to warrant the jury in finding the verdict rendered. *Albany v. Waterdict, etc., Co.*, 83 N.Y. State R. 136; *Hawtayne v. Bourne*, 7 M. & W. 598, and *Blyth v. Birmingham Waterworks Co.*, 11 Ex. at p. 784, followed.

*Held*, per MATHERS, J., that the absence of any precaution