

*Held*, also, FITZPATRICK, C.J., and GIROUARD, J., dissenting, that planks required by sub-sec. 3 over a bridge or culvert were not intended merely to protect the surface from injury by reason of inequalities in the wheels of the engine or machinery passing over it, but was also to guard against the danger of the flooring giving way. Appeal dismissed with costs.

*Robinette*, K.C., and *J. M. Codfrey*, for appellant. *W. White*, K.C., and *Douglas*, K.C., for respondent.

(Owing to the illness of a judge this case could not be reported earlier.)

Ont.]

GARLAND v. O'REILLY.

[Feb. 21.]

*Donatio inter vivos—Ante-nuptial contract—Gift to wife—Payment at death of husband—Institution contractuelle—Onerous gift.*

An ante-nuptial contract provided that "in the future view of the said intended marriage he, the said Edward O'Reilly, for and in consideration of the love and affection and esteem which he hath for and beareth to the said Miss Eliza Petrie, hath given, granted and confirmed and by these presents doth give, grant and confirm unto the said Miss Eliza Petrie, accepting thereof . . . the sum of twenty-five thousand dollars, currency of Canada, payable unto the said Miss Eliza Petrie by the heirs, executors, administrators or assigns of him the said Edward O'Reilly, the payment whereof shall become due and demandable after the death of him the said Edward O'Reilly." The parties were married and on the death of the said O'Reilly his wife claimed the right to rank on his estate as a creditor for the said sum of \$25,000 which claim was contested by the general body of creditors who had all become such after said contract was made.

*Held*, affirming the judgment of the Court of Appeal (21 O.L.R. 201), that this clause in the contract must be construed as a *donatio inter vivos* creating a present debt in favour of the future wife, payment of which was deferred; that such a contract could not be attacked by subsequent creditors; and that the wife was entitled to rank on the estate for the amount of said gift.

*Held*, per GIROUARD, J., that the donation was one à titre onereux. Appeal dismissed with costs.

*Casgrain*, K.C., for appellants. *Lafleur*, K.C., and *Chrysler*, K.C., for respondents.