infectious diseases and hospitals are dealt with in a distinct subdivision, commencing with s. 81. Conviction quashed.

J. S. T. Thompson, for applicant. *Ritchie*, K.C., and *Ballantyne*, contra.

Divisional Court.] [Jan. 28.

FOXTON *v.* HAMILTON STEEL COMPANY.

Contract—Sale of minerals—Place of delivery—Warranty—Breach—Deficiency of per centage—Damages.

Under a contract the plaintiff was to deliver to the defendants "300 tons of phosphate, from 60 to 70 per cent," at $6.00 per ton, to be shipped f.o.b. cars at a named railway station, from whence it was to be conveyed by rail to the works of the defendants. In a large portion of the rock delivered there was a deficiency of seven per cent. of "apatite," which is pure phosphate, but the defendants received and used it at their works. In an action to recover the balance of the contract price:—

Held: 1. The plaintiff must be held to have warranted that the rock would contain the per centage of apatite called for by the contract.

2. The defendants having received and used the rock, were liable for the value of the apatite which it contained, to be ascertained at the railway station for delivery, and not where it was used, and there being no evidence of further loss, the damages sustained by the defendants were seven per cent. of the freight paid by them for forwarding the rock by rail to their works, to be deducted from the amount of the plaintiff's claim in the action.

Lynch-Staunton, K.C., for plaintiff. *E. D. Armour*, K.C., for defendants.

Meredith, J.] [March 11.

MCMORRIN *v.* CANADIAN PACIFIC RAILWAY COMPANY.

Railways—Carriage of goods—Loss by fire—Negligence or omission of the Railway Company or its servants—Just and reasonable condition.

Although the statute law of Canada prevents a Railway Company from relieving itself from liability for damage caused by fire arising from any negligence or omission of it or its servants, still such a condition, when the damage arises otherwise than from any negligence or omission of the company or its servants is valid, and there is no law in Canada that such a condition shall be just and reasonable.

The goods arrived on April 21. Notice of their arrival was given to the owner on the same day, and they were destroyed on the 26th.

Held, on the evidence that the notice was sufficient, and that the owner had a reasonable time within which to move them, and not having done so, the defendant company was not liable.

I. MacCraken and *G. F. Henderson*, for plaintiff. *W. H. Curle*, for defendants.