C. contended his patent was valid as a combination patent of old elements, and also that L.'s patent was not a new invention. The Superior Court on the evidence found that C.'s patent was a fraudulent imitation of L.'s patent, and granted an injunction, and condemned C. to pay L. $600 damages for the profits he had made on selling candles made by the patented machine. This judgment was affirmed by the Court of Queen's Bench (appeal side). At the trial there was evidence that there were other machines known and in use for making candles, and there was no evidence as to the cost of making candles with such machines, or what would have been a fair royalty to pay L. for the use of his patent, and that L.'s trade had been increasing. On appeal it was

Held (affirming the judgment of the Court below), HENRY, J. dissenting, that L.'s patent had been infringed.

Also (reversing the judgment of the Court below), that the profits were not a proper measure of damages in this case, and that on the evidence only $100 should be awarded for the infringement.

Appeal dismissed with costs, the judgment of the Court below modified.

Lacoste, Q.C., for appellant.

Bobidoux, and *Geoffrion*, Q.C., for respondent.

Quebec.]

TREMBLAY v. SCHOOL COMMISSIONERS OF ST. VALENTIN.

Con. Stats. (L. C.) ch. 15—40 Vict. ch. 22, sec 11, P. Q.—Construction of—33 Vict. ch. 25, sec. 7—(P. Q.)—Erection of a schoolhouse—Decision of Superintendent—Final—Mandamus.

Under 40 Vict. ch. 22, sec. 11, the Superintendent of Education for the Province of Quebec, on an appeal to him from the decision of the School Commissioners of St. Valentin, ordered the school district of the Municipality of St. Valentin should be divided into two districts with a schoolhouse in each.

The School Commissioners by resolution subsequently decreed the division, and a few days later on a petition, presented by ratepayers protesting against the division, they passed another resolution refusing to entertain the petition. Later on, without having taken any steps to put into execution the decision of the Superintendent, they passed a resolution declaring that the district should not be divided as ordered by the Superintendent, but should be reunited into one.

In answer to a peremptory writ of mandamus, granted by the Superior Court, ordering the School Commissioners to put into execution the decision of the Superintendent of Education, the School Commissioners (respondents) contended that they had acted on the decision by approving of it, and, that as the law stood, they had power and authority to reunite the two districts on the petition of a majority of the ratepayers, and that their last resolution was valid until set aside by an appeal to the Superintendent.

Held (reversing the judgment of the Court of Queen's Bench, appeal side), that the commissioners having acted under the authority conferred upon them by Con. Stats. L. C. ch. 15 secs. 31 and 33, and an appeal having been made to the Superintendent of Education, his decision in the matter is final, 40 Vict. ch. 22, sec. 11, P. Q., and can only be modified by the Superintendent himself, on an application made to him under 33 Vict. ch. 25, sec. 7; and therefore, that the peremptory mandamus ordering the respondents to execute the Superintendent's decision should issue.

Appeal allowed with costs.

Frudel, Q.C., *Geoffrion*, Q.C., for appellants.

Beaudin, for respondents.

VOGEL ET AL. v. GRAND TRUNK RAILWAY COMPANY.

Railway Company—Carriage by railway—Special contract—Negligence—Liability for—Power of company to protect itself from—Live stock at owner's risk—Railway Act, 1868, sec. 20, sub-sec. 4—36 Vict. ch. 43, s 5—Railway Act, 1879.

A dealer in horses hired a car from the Grand Trunk Railway Company, and signed a shipping note by which he agreed to be bound by the following among other conditions:—

1. The owner of animals undertakes all risks of loss, injury, damage and other contingencies, in loading, etc.