take possession. He went, however, upon the land to see if the soil was fit for bricks, but he did not enclose it, though he agreed to pay part of the expense if the next owners would fence. P. in 1875 sold to the Gas Company, who took possession and improved, the Railway Company and defendants paying taxes from 1853.

Held, (CAMERON, J., dissenting), that plaintiff could recover the land, for that the possession of neither the Railway Company nor of defendant P. was sufficient to destroy his title.

PARSONS v. THE QUEEN INSURANCE CO.

Fire Insurance—Statutory condition—Variation condition.

The plaintiff applied for an insurance upon his stock in trade with the defendant company. Pending negotiations the company's agent conversed with the plaintiff respecting the amount of gunpowder stored on the premises. He said he thought the company's condition was to allow 25 pounds to be kept. Plaintiff said he did not keep more than 10 pounds, and had not more than that in stock. The insurance was then effected by an interim receipt, and the next day a loss occurred. The plaintiff had more than 10 pounds, but less than 25 pounds of powder in stock when the fire occurred. The statutory conditions prohibited more than 25 pounds being kept in stock without permission, and the company's variation of this condition relieved them from liability, if more than 10 pounds was "deposited on the premises, unless the same be specially allowed in the body of the policy, and suitable extra premium paid." The case having been dealt with on other grounds on an appeal to the Privy Council, was remitted to this Court to try whether the variation was a just and reasonable one.

Held, [HAGARTY, J., dissenting], that under the circumstances of this case, inasmuch as the company's agent had represented that 25 pounds of gunpowder was allowed to be kept in stock, the condition now insisted upon was not a just and reasonable one, and was therefore void, and that the plaintiff should recover.

Per ARMOUR, C.J.—The Act R. S. O. cap. 162, passed for the purpose of securing uniformity of conditions upon fire policies, and setting out such conditions as it deemed proper to be inserted in every policy, showed that the legislature believed such conditions to be just and reasonable for both insurers and insured, and therefore, that if any of the statutory conditions should be varied so as to increase the burden of the insured, such variation would not be a just and reasonable one, within the meaning of the Act.

Per HAGARTY, C. J., and GALT, J.—The variation was a just and reasonable one.

Per HAGARTY, C. J.—The statutory condition exempting the company from liability, if more than 25 pounds of powder were kept without permission, does not preclude or prohibit the insurers from bargaining that they will not be liable if more than 10 pounds be kept, except on certain conditions as to extra premium, etc.

Creelman, for the plaintiff.

Bethune, Q.C., and *Small*, for defendants.

HINTON v. ST. LAWRENCE AND OTTAWA RAILWAY CO.

LETT v. THE SAME.

Railway — Negligence — Accident—Running on unauthorized track.

The defendant company had laid three tracks upon a highway of the City of Ottawa, one of which had been laid without authority from the City, but had been used for a number of years, the City acquiescing, and the plans showing its existence were produced from their custody. This track diverged from the main track at the crossing of another street, and ran nearer to the adjacent buildings, so that a person approaching by the cross street could not see an approaching train at as great a distance as if it were on the main track. The plaintiff H. and a wife of the plaintiff L. were struck by a passing train when driving across this track. The learned Judge at the trial refused to direct the jury that the third track was laid without authority, and that its existence there was a wrongful act, but told them that the Company had no right to lay the rail, and that the question was whether the accident was caused by their negligence.

Held, that there was no misdirection, but that the existence of the third track was an element in considering the danger of the crossing, as it apparently increased the risk.

McCarthy, Q.C., for the plaintiff.

Bethune, Q.C., for the defendants.