The Legal News.

Vol. XI. JUNE 9, 1888. No. 23.

In *Coultas* v. *Victoria Railway Commissioners*, decided by the Privy Council on the 4th February last, 13 App. Cas. 222, their lordships remarked that no precedent had been cited of an action similar to it having been maintained, or even instituted, and they declined to establish such a precedent. Curious cases often come in groups. Since the decision of the Privy Council was rendered, Mr. Justice Davidson has decided a similar case in the Superior Court at Montreal, and a third case almost exactly like it, has come up at New York. The facts of the first case, which went to the Privy Council from Australia, were these:—The gate-keeper of a railway company had negligently invited the plaintiffs to drive over a level crossing when it was dangerous to do so, and although an actual collision with a train was avoided, nevertheless damages were assessed for physical and mental injuries occasioned by the fright of an impending collision. This was held error. The Court said: "According to the evidence of the female plaintiff her fright was caused by seeing the train approaching, and thinking they were going to be killed. Damages arising from mere sudden terror, unaccompanied by any actual physical injury, but occasioning a nervous or mental shock, cannot under such circumstances, their lordships think, be considered a consequence which in the ordinary course of things would flow from the negligence of the gate-keeper. If it were held that they can, it appears to their lordships that it would be extending the liability for negligence much beyond what that liability has hitherto been held to be. Not only in such a case as the present, but in every case where an accident caused by negligence had given a person a serious nervous shock, there might be a claim for damages on account of mental injury. The difficulty which now often exists in case of alleged physical injuries of determining whether they were caused by the negligent act would be greatly increased, and a wide field opened for imaginary claims. The learned counsel for the respondents was unable to produce any decision of the English Courts in which, upon such facts as were proved in this case, damages were recovered. The decision of the Supreme Court of New York (*Vandenburgh* v. *Truax*, 4 Denio,)—which he referred to in support of his contention was a case of a palpable injury caused by a boy, who was frightened by the defendant's violence, seeking to escape from it, and is like the case of *Sneesby* v. *Lancashire and Yorkshire Ry. Co.*, 1 Q. B. Div. 42."

The New York case is *Lehman* v. *Brooklyn City Railroad Co.*, 47 Hun, 365. A married woman, in a state of pregnancy, was standing in the door of her husband's house in Hicks street in the city of Brooklyn, with her little child, about four or five years of age, when a horse belonging to the defendant company, and which had run away, dashed up the street at a high rate of speed, with whiffletree dragging after him. The horse plunged toward the woman, but his progress was arrested by a post against which he fell. The woman, although not touched by the horse, sustained a severe shock from her fright, which brought on a long train of nervous diseases. It was held that she could not maintain an action for the injury. The Court said:—"We have been unable to find either principle or authority for the maintenance of this action, and we have been referred to none by the counsel."

The Montreal case, *Rock* v. *Denis*, was, as we have said, similar to the above. Through the carelessness of defendant, a bundle of laths rolled from the gallery of the third story of a building in which plaintiff and her husband occupied the ground tenement. At the moment the laths fell, the plaintiff, who was in a state of pregnancy, was standing in her doorway, about eight feet distant, and was greatly startled. Within an hour or two she fell ill, and the result was a miscarriage. Mr. Justice Davidson, both upon principle and on the authority of the Privy Council decision, declined to entertain the claim for damages, and the action was dismissed. The case of *Renner* v. *Canfield*, 36 Minn. 90, may also be consulted on the same subject.