

REPORTS AND NOTES OF CASES

Dominion of Canada.

SUPREME COURT.

Ontario.] WASHINGTON v. GRAND TRUNK RY. CO. [Dec. 9, 1897.
Railways—Construction of statute—51 Vict., c. 29, s. 262 (D.)—Railway crossings—Packing railway frogs, wing-rails, etc.—Negligence.

The proviso of the fourth sub-section of section 262 of "The Railway Act" (51 Vict., c. 29 (D.)) does not apply to the fillings referred to in the third sub-section and confers no power upon the Railway Committee of the Privy Council to dispense with the filling in of the spaces behind and in front of railway frogs or crossings and the fixed rails of switches during the winter months.

Judgment of the Court of Appeal for Ontario (24 Ont. App. R. 183) reversed. Appeal allowed with costs.

Stanton, for appellant. McCarthy, Q.C., for respondents.

Ontario.] HAGGERT v. BRAMPTON. [Dec. 9, 1897.
Mortgage—Trade fixtures—Chattels—Tools and machinery of a "going concern"—Constructive annexation—Mortgagor and mortgagee.

The purposes to which premises have been applied should be regarded in deciding what may have been the object of the annexation of movable articles in permanent structures with a view to ascertaining whether or not they thereby became fixtures incorporated with the freehold, and where articles have been only slightly affixed, but in a manner appropriate to their use, and showing an intention of permanently affixing them with the object of enhancing the value of mortgaged premises or of improving their usefulness for the purposes to which they have been applied, there would be sufficient ground, in a dispute between a mortgagor and his mortgagee, for concluding that both as to the degree and object of the annexation, they became parts of the realty. Appeal dismissed without costs.

Aylesworth, Q.C., and Justin, for appellant. Blain and D. O. Cameron, for respondents.

Quebec.] COWANS v. MARSHALL. [Dec. 9, 1897.
Negligence—Master and servant—Common fault—Jury trial—Assignment of facts—Arts. 353 and 314 C.C.P.—Art. 427 C.P.Q.—Inconsistent findings—Misdirection—New trial—Pleading.

In an action to recover damages for injuries alleged to have been caused by negligence, the plaintiff must allege and make affirmative proof of facts