

Nov. 1, 1882.]

NOTES OF CANADIAN CASES.

[Ct. of App]

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NELLES V. BANK OF MONTREAL.

Insolvency—Unjust preference.

The decree of BLAKE, V. C., 28 Gr. 449, affirmed on appeal.

Rose, Q.C., and McDonald, for appeal.
Street, contra.

THE QUEEN EX REL. GRANT V. COLEMAN.

Quo warranto—Municipal elections—Appeal.

The Judge of the County Court ordered a writ of *quo warranto* to test the validity of the election of an alderman; and subsequently, before appearance entered to the writ, set aside all proceedings in the matter for irregularity. The relator thereupon applied in Chambers for a *mandamus* to compel the County Judge to try the case, when the presiding Judge (HAGARTY, C. J.) refused the writ; and on motion in *banc* the Court affirmed his ruling (see 8 P. R. 497, 46 U. C. R. 175). Whereupon the relator appealed to this Court, which appeal was dismissed, on the ground that the Judge in Chambers had not power to review the order of the County Judge if he had authority to make it; and if it could be reviewed the application should have been to the Court, not to a Judge in Chambers as here; and under all the circumstances the appeal was dismissed without costs.

The writ of *quo warranto* having been issued and served, the County Court Judge had not power to set it aside.

McMichael, Q.C., for the appeal.
Aylesworth, contra.

NEILL V. THE TRAVELERS INS. CO.

Accident policy—Voluntary exposure to risk.

An appeal from the Court of Common Pleas, who ordered a non-suit after verdict for the plaintiff (31 C. P. 394). The Court being equally divided, the appeal was dismissed with costs.

Per HAGARTY, C. J., and CAMERON, J.—The evidence shewed that the deceased had voluntarily gone unnecessarily into a place of danger.

Per BURTON and PATTERSON, JJ.A.—In an action upon an accident policy, the company were bound to show a breach of the conditions in the policy, and that the party insured had voluntarily exposed himself to unnecessary danger; that in a case where there was evidence of

the insurance and death by accident, it was one proper for the jury, and if the evidence adduced by the defendants was not sufficient to prove the defence as raised on the pleadings, the verdict should have been for the plaintiff; and under the circumstances a new trial should have been directed.

One of the conditions of the policy was that the insured should not stand or walk on a railway track.

Per HAGARTY, C.J., and CAMERON, J.—Such condition was broken by the insured being on a railway tract in a buggy.

Per BURTON and PATTERSON, JJ.A.—Such condition was intended to apply to the case common in Canada of persons using the railway tracts as roadways, and could not be considered as applying in every case of an accident to the insured while on such track.

S. H. Blake, Q.C., and G. H. Watson for appeal.

Robinson, Q.C., contra.

MACDONALD V. WORTHINGTON.

Partnership articles, Construction of—Ownership of stock—Law of Quebec—Reformation of articles.

The plaintiff and defendant M., having on hand large contracts to fulfil, entered into partnership with the defendant W., under the style of J., W. & Co. The articles of agreement, which were drawn in the Province of Quebec, declared that the plant, which the plaintiff contributed to the partnership, should become the property of the said firm, that is to say, the one half thereof shall revert to and belong to the plaintiff and defendant M., and the other half to W. The law of Quebec was found to be that if nothing were provided by the articles as to ownership of the plant, it would be taken out of the partnership at the conclusion of the same by the party who had contributed it, before division of profits. The plaintiff and the defendants M. all swore that the intention was that they should receive credit for the plant as their property in the accounts of the partnership. It was shown also that in the treaty for the partnership, inventories of the plant were drawn and its value was discussed, the plaintiff putting it at \$57,130, W. at \$40,000. The notary who drew the articles swore that if it had been intended to make a