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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.

The Government have wisely declined to entertain the suggestion of erecting a new Court-house for Montreal on a different site. By transferring the Circuit business to another building, additional space will be obtained in the present edifice. The Criminal and Police courts might also be advantageously combined with the Circuit business in one building: in which case the present Court-house will afford adequate accommodation for some years to come. The time is doubtless not far distant when a new Court-house will be required, but the present site, with its open spaces on all sides, is probably the best that could be obtained in the city, and during the erection of the new building —which should be commensurate with the wants of a city of at least one million inhabitants—temporary accommodation will have to be provided elsewhere.

The appointment of judges for the trial of small causes at Montreal is a measure which, within our recollection, has been constantly suggested for over a quarter of a century. At last, the Government have resolved to carry it out. This will give immense relief to the judges of the Superior Court, who have hitherto been obliged to leave their proper business, in order to hold the terms of the Circuit Court. There can be little doubt, we think, that the new arrangement will also give greater satisfaction to the bar and to the public generally.

CHANGES AT MONTREAL.

The following resolutions have been passed by the Quebec Assembly :—

Resolved,—That the Lieutenant-Governor may out of the amount collected in every year of salaries, fees, emoluments and pecuniary profits attached to their respective offices, assign to the Prothonotary of the Superior Court at Montreal the sum of $4,000 annually, to the Clerk of the Circuit Court in Montreal, $2,600 annually, and to the Clerk of the Superior Court sitting in Review in the district of Montreal, the sum of $2,600 annually.

The next resolution provides for the business of the Circuit Court :—

"Whereas the creation of a special court composed of two district magistrates permanently sitting in the city of Montreal, would be very advantageous to the interests of justice in the district, so that all cases, proceedings, matters and things which are within the jurisdiction of the Circuit Court might be brought before such Court, and that the judges of the Superior Court might more exclusively attend to the business of their proper Court :

Be it *resolved*,—That two district magistrates may be appointed by the Lieutenant-Governor-in-Council with a salary of $3,000 per annum each, to preside over a special district magistrate's court in the city of Montreal, by and before which shall be brought, heard and decided all causes, proceedings, matters and things which now are within the jurisdiction of the Circuit Court of the said district.

CHARGE OF MR. JUSTICE CHURCH.

Mr. Justice Church, in his charge to the Grand Jury, at the opening of the June Term of the Court of Queen's Bench, at Montreal, made the following observations :—

The recent legislation on the subject of speculative dealing in stocks and other commodities on margins, with the view of suppressing certain objectionable features of some of these transactions, is intended to meet a want in our system of law, and to supply a remedy for a condition of things which had become an evil of vast and evergrowing magnitude, and which had occasioned great private pecuniary loss and moral degeneration. Whether your attention will be drawn to this matter in a special and particular way I do not know, but should such happen, I bespeak in the interests of the general public as well as of those who may be the subject of accusation, your most careful and unprejudiced attention.

The subject of the licensing of the liquor traffic, not alone with a view to revenue purposes, but also as regards its regulation and restriction, is again engaging the attention of the general public, and in a few days must also engage the attention of the members of the Legislature. It is to be hoped that the full and exhaustive examination and subtle

discussion of the general subject, as well as of the special remedies which it is proposed to submit to the Legislature, may result in wise emendatory legislation, and that the moral depravity, physical degeneration and criminal tendencies which a badly regulated and badly administered system of licensing inevitably brings about may be mitigated, if they cannot at the present moment be wholly arrested.

The partial re-organization of the civic police force has in a measure restored confidence and encouraged the public to hope that in the near future it will be brought up to a standard of efficiency, such as the inhabitants of this great city have a right to expect. Much, however, especially in the detective part of the police body, requires examination and amendment, and it is to be hoped that no unwise parsimony will prevent our civic authorities from making the force adequate in numbers, efficient in organization and equipment, and withal officered in such a manner as to restore confidence, not only here but elsewhere, in its thoroughness and reliability.

The increased insurance rates, which the people of the city have been called upon to submit to, is in part an outgrowth of what was felt to be a lax and inefficient police control, and affords another stimulus to our municipal authorities to hasten the re-organization of the force.

The result of the recent trials of certain persons entrusted with the detection of offences against the laws of the country, and the prompt, satisfactory way in which the juries empanelled to try the offenders dealt with them, has, I had almost said, renewed the confidence of the public in our system of trial by jury, perhaps I would be more accurate if I were to say, has added another proof of the trust which may always be placed in that system, and if during the trials there were moments when the public felt or feared there might be a miscarriage of justice, the result proved how entirely trustworthy is our system of administering the criminal law, and that whilst allowing to the defence every reasonable scope and latitude, the law, nevertheless, remains a terror to evil doers, and that sooner or later those who infringe its provisions, no matter how secure may apparently be their position from suspicion, will inevitably be brought to trial and judgment.....

The building in which we now sit has been undergoing very considerable modifications and repairs with a view to add to its convenience and sufficiency for the despatch of judicial business. These alterations have necessarily and unavoidably been attended with considerable public and private inconvenience, and if you are called upon to submit to some of these you will, I am sure, find they will be made as slight as the sheriff and his officers can make them. I wish I could feel that when the repairs are made, this building will be adequate to the growing wants of the district, and afford the necessary accommodation for the Court and the officers of justice. That it will be much improved I doubt not, but I fear that sooner or later, and perhaps the sooner the better, the problem must be faced, how is adequate accommodation to be given to the Courts and to the public in connection with the administration of the civil and criminal law of the district, and whether to do so it is not necessary to construct new buildings altogether. Upon this matter you may have some opinion formed and may desire to express it. It is an important subject, and as the expense of building new buildings must be very considerable, it is one not to be disposed of lightly or without the most mature consideration. Should a new building or buildings be determined upon, I hope that more enlarged space will not be alone considered, but that drainage, ventilation, and such other matters, as the experience of this Court House has shown the necessity of, may engage a large share of the attention of those who have charge of the subject.

COUR DE CIRCUIT.

MONTREAL, 7 mai 1888.

Coram LORANGER, J.

DUPRÉ v. DUPUIS, et Dame DUPRAS, intervenante, et HAGAR, mis en cause.

Locataire et sous-locataire—Privilége du locateur—Saisie-gagerie—Défense de sous-louer.

JUGÉ:—*Que celui qui sous-loue un immeuble d'un*

locataire, qui n'a pas le droit de sous-louer, se trouve dans la position d'un tiers qui consent à ce que ses meubles garnissent la maison, et est, par conséquent, quant à ses meubles qui ont garni la maison du locateur principal, sujet au privilége de ce dernier.

Paul Dupuis, locataire de N. Dupré, prit au mois de décembre 1887, une saisie-gagerie contre Madame Dupras, sa sous-locataire, pour cinq mois de loyer, savoir, $45.00 jusqu'au premier mai 1888. Celle-ci plaida qu'ayant loué au mois, elle avait le droit de mettre fin au bail en donnant un mois d'avis, mais que n'ayant pas donné cet avis, elle offrait de payer un mois d'avance, et elle déposa $9.00. Cette offre fut acceptée par le demandeur Dupuis.

Dupré, le locateur principal, prit de son côté une saisie-gagerie contre Dupuis, alléguant qu'il avait dégarni la maison louée, pour tout le loyer jusqu'au premier mai 1888, savoir, pour $66.00. Dupuis ne contesta pas cette action.

Madame Dupras fit une intervention alléguant que ses meubles avaient été saisis par Dupré, alors qu'elle avait réglé avec Dupuis, son locateur, et qu'elle ne lui devait rien. Le demandeur a contesté cette intervention alléguant que dans son bail à Dupuis il y avait une clause qui lui défendait de sous-louer, et que c'est en violation de cette clause que Madame Dupras avait sous-louée de Dupuis.

L'intervention fut renvoyée avec dépens par le jugement suivant:—

"La Cour, etc....

"Attendu (*faits de la cause*).

"Attendu que par cette sous-location, au mépris de la prohibition du premier bail, la dite Dame Dupras s'est trouvée dans la position d'un tiers qui consent à ce que ses meubles garnissent une maison qui est sous bail, et que par suite elle a soumis ses dits meubles et effets au privilége du propriétaire Dupré pour tout le loyer échu et à écheoir;

"Attendu en conséquence que la saisie-gagerie par droit de suite de Dupré est fondée et que la dite Dame Dupras ne peut en obtenir main levée;

"Considérant en outre que les conventions spéciales qui ont pu intervenir entre Dupuis et Madame Dupras ne peuvent affecter le droit de Dupré et que les offres de la dite Dame Dupras sont insuffisants quant à lui;

"Considérant néanmoins quant à la demande de Dupuis contre la dite Dupras que ces offres ont été acceptées comme suffisantes;

"L'intervention est renvoyée; la saisie-gagerie par droit de suite est maintenue et déclarée bonne et valable sur les effets saisis sauf ceux sur lesquels il a été produit désistement, le défendeur Dupuis est condamné à payer la somme de $22.00, avec dépens contre lui comme dans une action par défaut, et dépens contre l'intervenante sur son intervention et la contestation d'icelle."

Ouimet, Cornellier & Emard, avocats du demandeur.

J. A. Hébert, avocat du défendeur.

St-Pierre, Globensky & Poirier, avocats de l'intervenante.

(J. J. B.)

COUR DE CIRCUIT.

MONTRÉAL, 29 mai 1888.

Coram GILL, J.

GIRARD v. PARENT.

Procédure—Interrogatoires sur faits et articles.

JUGÉ:—*Que des interrogatoires sur faits et articles ne peuvent être déclarés pro confessis contre la partie en défaut de répondre, s'il n'appert point par le rapport de l'huissier qu'une copie des interrogatoires ait été aussi signifiée.*

2o. *Que les frais de l'ordre et de sa signification n'entreront pas en taxe contre la partie assignée, quelque soit l'issue du procès.*

Le demandeur assigna le défendeur sur faits et articles et celui-ci ne comparut pas. A l'audition, le défendeur, par ses procureurs, s'objecta à ce que jugement fût rendu contre lui, prétendant que la Cour n'avait pas la preuve que les interrogatoires eussent été signifiés, l'huissier disant dans son rapport: "*J'ai signifié une vraie copie du présent original d'ordre sur faits et articles en parlant, etc., etc.*"

La Cour après avoir délibéré maintint la prétention du défendeur dans les termes suivants;

"Attendu que le rapport de signification ne fait mention que de l'ordre sur faits et articles comme ayant été signifié au défendeur, et que rien ne prouve que les interrogatoires aient été signifiés, d'où il résulte que les dits interrogatoires ne sauraient être tenus *pro confessis;* il est ordonné que cet ordre et sa signification et l'original des interrogatoires produits n'entreront pas en taxe contre le défendeur quelque soit l'issue du procès."

Tucker & Cullen, pour le demandeur.

Lavallée & Olivier, pour le défendeur.

(L. A. L.)

COUR D'APPEL DE RIOM.

15 février 1886.

Présidence de M. Oudoul.

Justin v. Société des Forges de Chatillon.

Animal—Responsabilité—Présomption de faute —Domestique.

La responsabilité qui incombe, aux termes de l'art. 1385 *C. Civ., au maître d'un animal pour le dommage causé par ce dernier, procède d'une présomption de faute de la part du maître de cet animal, présomption qui ne peut être détruite que par la preuve, à la charge dudit propriétaire, soit d'un cas fortuit ou de force majeure, soit d'une faute caractérisée imputable à la partie lésée.*

Il en est ainsi alors même que le dommage causé l'a été à l'ouvrier préposé par le patron à la conduite de l'animal.

La Cour,

Considérant que le propriétaire d'un animal ou celui qui s'en sert, pendant qu'il est à son usage, est selon l'art. 1385 C. Civ., responsable du dommage que l'animal a causé;

Considérant que cette responsabilité procède d'une présomption légale de faute de la part du maître de cet animal; qu'elle ne peut être détruite que par la preuve, à la charge dudit propriétaire, soit de cas fortuit ou de force majeure de l'accident, soit d'une faute caractérisée imputable à la partie lésée;

Considérant que la présomption légale de l'art. 1385 milite alors même que le dommage causé l'a été à l'ouvrier préposé par le patron à la conduite de l'animal; qu'en effet, travaillant sur l'ordre du propriétaire, son maître, ne se servant de l'animal et n'en ayant l'usage que pour le compte de ce dernier, dans l'exécution d'un service commandé, l'ouvrier ou préposé n'est pas du nombre des personnes (telles que l'usufruitier, l'usager ou le locataire) contre lesquelles ledit art. 1384 retient également la présomption de faute;

Considérant que c'est donc à tort que les premiers juges (Trib. civ. de Montluçon 20 mars 1884) ont mis à la charge du sieur Jean Justin, ouvrier mineur au service de la Société des forges de Châtillon et Commentry, la preuve à administrer par témoins que l'accident dont il a été victime le 21 septembre 1882 était, en fait, imputable à la faute et à l'imprudence des représentants de ladite société; qu'il incombait, au contraire, à celle-ci, présumée *a priori* en faute, d'établir qu'elle n'a pu empêcher le dommage à raison duquel il lui est demandé réparation, et qu'en définitive l'événement est dû soit à un cas fortuit, de force majeure, soit à la faute unique et caractérisée de Justin;

Par ces motifs,

Dit qu'il a été mal jugé, bien appelé;

Emendant, déclare la Société des forges de Châtillon et Commentry responsable de l'accident causé au concluant; dit que ladite société n'a pas prouvé, ainsi qu'elle était tenue, que l'accident soit arrivé par un cas fortuit, de force majeure ou par l'unique faute de Justin, etc.

RECENT ONTARIO DECISIONS.

Malicious arrest—Capias ad respondendum—Necessity to set aside before bringing action —Reasonable and probable cause—Duty of Judge.

In an action for malicious arrest on the ground of want of reasonable and probable cause, to enable the plaintiff to recover it is not necessary to shew that the *ca. re*, or the Judge's order on which the same was obtained, has been set aside.

The defendant in his application for an order for the *ca. re.* by his affidavit made out a *prima facie* case, but certain facts and circumstances, which it was alleged he was aware of, were omitted therefrom, which, it was contended, might, if stated, have satisfied the Judge granting the order that, although the plaintiff was about to depart from the Province, it was not with intent to de-

fraud, etc. At the trial, the Judge decided the question of reasonable and probable cause without leaving to the jury any question as to whether the statements in the defendant's affidavit fairly stated the case.

Held, that before deciding on the question of reasonable and probable cause, the Judge should have seen that the facts on which he ruled were either proved without contradiction, or admitted, or found by the jury; Burton, J. A., *dissentiente*; Patterson, J. A., *dubitante*.—*Erickson* v. *Brand*, Court of Appeal, Jan. 30, 1888.

Railway Company—Shipment of goods to a point beyond defendants' line—Negligence—Construction of conditions of contract—R. S. C. c. 109, s. 104.

An action to recover damages for the loss of some goods consigned to be carried by the defendants from Toronto to McGregor Station, on the C. P. Railway, in Manitoba, and for injury sustained by other goods by wet, and for delay in transport. The defendants' line of railway extended only as far as Fort Gratiot, Michigan, and the goods were carried the rest of the way by other companies, and were damaged and lost by the negligence of one or more of such companies.

The defendants sought to protect themselves from liability by setting up the 10th condition endorsed on the receipt given to the plaintiff for the amount paid by him for carriage, which was as follows:—"All goods addressed to consignees at points beyond the places at which the company has stations, and respecting which no direction to the contrary shall have been received at those stations, will be forwarded to their destination by public carrier or otherwise, as opportunity may offer, without any claim for delay against the company for want of opportunity to forward them; or they may, at the discretion of the company, be suffered to remain on the company's premises or be placed in shed or warehouse (if there be such convenience for receiving the same) pending communication with the consignees, at the risk of the owners as to damages thereto from any cause whatever. But the delivery of the goods by the company will be considered complete, and all responsibility of the said company shall cease, when other such carriers shall have received notice that the said company is prepared to deliver to them the said goods for further conveyance; and it is expressly declared and agreed that the said Grand Trunk Railway Company shall not be responsible for any loss, misdelivery, damage, or detention that may happen to goods so sent by them, if such loss, misdelivery, damage, or detention occur after the goods arrive at the said stations or places on their line nearest to the points or places which they are consigned to, or beyond their said limits."

Held, that the contract of the defendants was to carry the goods to McGregor Station; and in its true construction, the condition quoted applied only to the forwarding of the goods from the place to which the defendants had contracted to carry them, whether that was a place on the line of the defendants, or on a connecting railway, and had not the effect of limiting the liability of the defendants to anything occurring upon their own line.

Collins v. *Bristol & Exeter R. W. Co.*, 7 H. L. Cas. 194, followed.

Held, also, that the provisions of the Railway Act, R. S. C. c. 109, s. 104, which preclude a railway company from relieving themselves from liability by any notice, condition, or declaration, if the damage arises from any negligence, omission, or misconduct of the company or its servants, do not apply to a contract to carry goods over other lines, even though such are within the territorial jurisdiction of the Parliament of Canada.

The judgment of the Queen's Bench Division, 12 O. R. 103, affirmed, but on different grounds.—*McMillan* v. *Grand Trunk Ry. Co.*, Court of Appeal, Jan. 30, 1888.

Railway—Expropriation of lands—Compensation—Date at which value to be ascertained—Increase in value owing to railway itself—Deviation of street.

Held, affirming the decision of Ferguson, J., 12 O. R. 624, that in ascertaining the compensation to be made to a landowner for land expropriated for a railway under R. S. C. c. 109, s. 8, the value of the part taken (as well as the increased value of the part not taken, which by s-s. 21 is to be set off) is to

be ascertained with reference to the date of the deposit of the map or plan and book of reference, under s-s. 14 (or in this case with reference to the date of the notice or decision to expropriate), and therefore such value should include any increase which may have been caused by, or is owing to, the contemplated construction of the railway.

Semble, per Burton, J. A., that what is intended by s-s. 21 is a direct or peculiar benefit accruing to the particular land in question, and not the general benefit resulting to all landowners from the construction of the railway.

Per Osler, J. A., that the land in question not having been taken strictly for the purposes of the railway, but after the laying down of the railway, for the purpose of deviating a street, to allow the railway to run along the original street, there was no right to set off the increased value of the land not taken caused by the construction of the railway.—*James* v. *Ontario & Quebec Ry. Co.*, Court of Appeal, Jan. 10, 1888.

Elections—R. S. C. c. 9, ss. 32 and 33, construction of—Time for trial of petition—Extending time.

The petition was presented on the 6th of May, 1887, during a session of Parliament which ended on 23rd June, and issue was joined on 3rd June; no application was made or step taken after that until the 6th December, 1887, when the petitioner applied to have a time and place appointed for the trial, and to have the time for the commencement of the trial enlarged.

The first part of s. 32 of the Controverted Elections Act, R. S. C. c. 9, is as follows:

"The trial of every election petition shall be commenced within six months from the time when such petition has been presented, and shall be proceeded with from day to day until such trial is over; but if at any time it appears to the Court or Judge that the respondent's presence at the trial is necessary, such trial shall not be commenced during any session of Parliament: and in the computation of any time or delay allowed for any step or proceeding in respect of any such trial, or for the commencement thereof as aforesaid, the time occupied by such session of Parliament shall not be included."

Held, Patterson, J. A., dissenting, that the exception in the last clause is confined to a case in which the Court is satisfied that the respondent's presence is necessary; *such trial* refers to a trial at which the respondent's presence has been declared to be necessary; and no such declaration having been made in this case, the time of the session of Parliament was not to be excluded from the six months within which the trial was to be commenced.

It was not incumbent upon the respondent to move to dismiss the petition for default.

The Court could not *nunc pro tunc* declare that the respondent's presence at the trial was necessary.

Per Curiam, that the time for the commencement of the trial may be enlarged under s. 33, notwithstanding the expiration of the six months; but it had not been established in this case that the requirements of justice rendered such enlargement necessary; and the Court refused to appoint a time and place for trial or to enlarge the time.—*In re Algoma Dominion Election Petition, Burk* v. *Dawson*, Court of Appeal, Jan. 10, 1888.

Railway Company—Expropriation of lands—Dominion Railway Act or Provincial Railway Act—Work for general advantage of Canada—Notice.

On an application for an injunction to restrain the defendants, who were incorporated by Statutes of the Ontario Legislature, from applying to a County Judge for a warrant for possession of certain lands required by them, and being expropriated by them under the provisions of the Ontario Railway Act, on the ground that the defendants' railway had been declared a work for the general advantage of Canada, and that no notice of expropriation had been served, as required by the provisions of the Ontario Railway Act;

Held, under the circumstances of this case, and following *Clegg* v. *Grand Trunk R. W. Co.*, 10 O. R. p. 713, and *Darling* v. *Midland R. W. Co.*, 11 P. R. 321, that the defendants were no longer within the operation of the Ontario Statutes.

Held, also, that a notice requiring the lands, given under the Dominion Railway Act, was not a sufficient notice under the Ontario

Railway Act.—*Barbeau* v. *St. Catharines & Niagara Central Ry. Co., Chancery Division*, Ferguson, J., March 15, 1888.

Railway Company — Negligence — Liability — Train, meaning of—R. S. C. c. 109, s. 52—Obligation to ring bell.

The defendants' station at A. was on what was known as the side track, between which and the main track there was a platform for passengers alighting from and getting on the trains on the main track. The plaintiff had come to the station to meet a friend, and ascertaining from her that she had left her overshoes in the car, he attempted to cross over the side track and reach the platform, when the engine and tender, which had been detached from the rest of the train, and were backing down the side track to pick up a car some fifty yards distant, ran on the plaintiff and injured him. The plaintiff was looking in the opposite direction from that in which the engine and tender were coming, and therefore did not see them; and it appeared that had he been looking out, he must have seen them before he attempted to cross, and so avoided the accident, as it was only a second or two from the time he left the platform until he was struck, and there was no obstruction to his view.

Held, that the accident having been caused by the plaintiff's own negligence and want of care, the defendants were not liable.

Quære, whether an engine and tender constitute a train within s. 52 of R. S. C. c. 109, so as to require a man to be stationed on the rear car to warn persons of their approach, but in any event there was a man so stationed here, who did give warning.

Held, also, that the statutory obligation to ring the bell or sound the whistle only applies to a highway crossing, and not to an engine shunting on a railway company's own premises.—*Casey* v. *Canadian Pacific Ry. Co.*, Common Pleas Division, March 10, 1888.

Master and Servant — Wrongful dismissal—Manager of Company — Speculation in margins.

The defendants carried on the business of a commercial agency, of which the plaintiff was general manager. By the terms of his engagement the plaintiff was to be paid a salary of $5,000, and was to devote his whole time, influence, and talents to the successful promotion of the business; the failure of either party to keep the agreement rendering it void. In the discharge of the plaintiff's duties in rating merchants when found speculating, their rating would be lowered. The plaintiff having engaged in speculating in margins on the stock and grain exchanges, through brokers and bucket shops, and having sunk all his private means, and become indebted to a large extent beyond his ability to pay, and thereby brought the defendants into disrepute, was requested by them to give up speculating, which he refused to do, saying that if his doing so was a condition of his remaining with the company he would dissolve his connection therewith; whereupon he was dismissed.

Held, that the company were justified in dismissing him—*Priestman* v. *Bradstreet Co.*, Common Pleas Division, March 10, 1888.

Agreement — Manufacture of goods — "Actual first cost," meaning of.

The defendants, carrying on business in manufacturing and upholstering goods, entered into an agreement with the plaintiff, whereby the plaintiff was to manufacture all the upholstered goods sold by the defendants at an advance of 11 per cent. upon the actual first cost of goods made and shipped from Toronto; the percentage to pay cost of packing and shipping the goods, and material used as packing to be charged at cost price; the plaintiff to buy all goods required for manufacture (except such frames as the plaintiff should make himself) from the defendants; and the price charged for the goods to be understood as the actual first cost; and the actual first cost value of the goods so manufactured for the defendants to be computed from the prices charged by the defendants to the plaintiff.

Held, that under the agreement the "actual first cost" on which the plaintiff was to charge an advance of 11 per cent. was the price of the material used and the wages paid.—*Black* v. *Toronto Upholstering Co.*, Common Pleas Division, March 10, 1888.