THE
LEGAL NEWS.

VOL. XV. DECEMBER 15, 1892. No. 24.

CURRENT TOPICS AND CASES.

An important contribution to the jurisprudence on the subject of gaming transactions was made by Mr. Justice Doherty, in the Superior Court, Montreal, in deciding the case of *Perodeau* v. *Jackson*, on the 10th December, 1892. It appeared that the plaintiff had deposited a sum of money in the hands of defendants, his brokers, as margin for speculative stock transactions which, admittedly, were mere *jeux de bourse*. After the transactions were completed a certain sum remained in the hands of the brokers, and this was the amount claimed by the plaintiff. The Court held that an action lay for the recovery of the balance, which appeared by an account rendered by the brokers, after deduction of all losses incurred in the transactions. The Court treated the deposit of margin as a pledge, and held that the illicit nature of the debt to secure which a pledge is given, is not a ground which the pledgee can invoke as entitling him to retain the pledge,—more especially where the pledge is given, as in the present case, to secure merely an eventual indebtedness, which, whether licit or illicit, has never existed, the event on which it was to come into existence not having occurred.

In *Adams* v. *Boucher*, the Court of Review, Montreal, Nov. 30, 1892, decided an interesting point as to the

jurisdiction of the Circuit Court. It was held, on contestation of declaration of a garnishee, in a case before the Circuit Court, that that Court has jurisdiction to pronounce upon the validity of a deed invoked by the garnishee to prove title to goods in his hands, though the consideration mentioned in the deed exceed $200.

In *Turnbull* v. *Travellers' Insurance Co.*, Court of Review, Montreal, Nov. 30, 1892, Mr. Justice Doherty, delivering the judgment of the Court, decided an important point as to non-suits in our practice. It was held that the judge presiding at a jury trial has no power to non-suit a plaintiff save in the two cases provided for by Articles 394 and 395, C. C. P., that is, either where the plaintiff does not appear at the time and place fixed for the trial, or where, having so appeared, he, at any time during the trial and before verdict, withdraws from Court and abandons his suit,—the effect of such non-suit being in either case to dismiss the plaintiff's action, but permit his beginning anew. Any variation of these rules which may exist in modern English practice cannot affect our procedure which is based upon the system as it existed in England at the time of its introduction into this country.

The office of Chief Justice of the Supreme Court of Canada, vacated by the death of the late Chief Justice Ritchie, has been filled by the appointment, on the 13th instant, of Mr. Justice Strong, a puisne judge of the Court. Mr. Justice Strong has been a member of the Court since it was constituted, and was, at the time of appointment, the senior justice. Mr. Justice Strong's place, at date of writing, has not been filled.

Mr. T. C. deLorimier, Q.C., is the third of the elder members of the Montreal Bar who have passed away within a brief period. Mr. deLorimier, who was in his fifty-sixth year, was admitted in 1861, and practised for

many years with his brother, now Mr. Justice deLorimier. The firm enjoyed a very extensive practice, and the deceased, who was deservedly very popular, will be greatly missed by his professional brethren.

SUPREME COURT OF CANADA.

OTTAWA, Nov. 3, 1892.

Quebec.]

COUTURE v. BOUCHARD.

Supreme & Exchequer Courts amending Act, 1891—54-55 *Vic., ch.* 25, *s.* 3—*Appeal from Court of Review—Case standing over for judgment—Amount necessary for right of appeal—Arts.* 1178 *&* 1178 (*a*) *C. C. P.*

The action in this cause was for $2,006, and the case was argued and taken *en délibéré* by the Superior Court sitting in review on the 30th September, 1891, the day on which the Act 54-55 Vic., ch. 25, s. 3, giving a right of appeal from the Superior Court in Review, to the Supreme Court of Canada, was sanctioned, and the judgment appealed from was rendered a month later. On appeal to the Supreme Court of Canada,

Held, Per Strong, Fournier and Taschereau, JJ., that the respondent's right could not be prejudiced by the delay of the Court, and under the ruling of *Hurtubise* v. *Desmarteau* (19 Can. S. C. R. 562), the case was not appealable.

Per Gwynne and Patterson, JJ. That the case did not come within the words of sec. 3, ch. 25, 54-55 Vic., inasmuch as the judgment, being for less than £500 sterling, was not a judgment from which the appellant had a right of appeal to the Privy Council in England. Arts. 1178, 1178 (a) C. C. P.

Appeal quashed with costs.

T. C. Casgrain, Q.C., for motion.

Pelletier, contra.

OTTAWA, Oct. 10, 1892.

Quebec.]

O'SHAUGNESSY v. BALL.

36 *Vic., ch.* 81 (P. Q.)—*Booms—Proprietary rights—Replevin—(Revendication)—Estoppel by conduct.*

O'S., claiming to be the legal depositary, and T. McC., claiming to be the usufructuary, of certain booms, chains and anchors in the Nicolet River, under 36 Vic., ch. 81, and which G. B., being

in possession of the same for several years under certain deeds and agreements from T. McC., had stored in a shed for the winter, brought an action *en revendication* to replevy the same, and for $5,000 damages.

Held, affirming the judgment of the Court below, that O'S. and T. McC. were not entitled to the possession as alleged, and that they were precluded by their conduct and acquiescence from disturbing G. B.'s possession. See *Ball* v. *McCaffrey*, (20 Can. S. C. R. 317).

Appeal dismissed with costs.

Solicitor for appellants: *M. Honan.*

Solicitor for respondent: *P. N. Martel.*

OTTAWA, Oct. 10, 1892.

Quebec.]

BAPTIST v. BAPTIST.

Appeal—Final judgment—Action en reprise d'instance—Art. 439, C. C. P.—R. S. C., ch. 135, secs. 2, 24 & 28.

In an action brought to set aside a deed of assignment the plaintiff died before the case was ready for judgment, and the respondent having petitioned to be allowed to continue the suit as legatee of the plaintiff under a will dated the 17th November, 1869, the appellant contested the continuance on the ground that this will had been revoked by a later will, dated 17th January, 1885. The respondent replied that this last will was null and void, and upon that issue the Court of Queen's Bench for Lower Canada (Appeal side), reversing the judgment of the Superior Court, declared null and void the will of 17th January, 1885, and held the continuance of the original suit by respondent to be admitted. On appeal to the Supreme Court the respondent moved to quash the appeal on the ground that the judgment appealed from was an interlocutory judgment, and it was

Held, that the judgment was *res judicata* between the parties, and final on the petition for continuance of that suit, and therefore appealable to this Court. R. S. C., ch. 135, secs. 2 and 28. *Shaw* v. *St. Louis* (8 Can. S. C. R. 385) followed.

Motion refused with costs.

Lafleur for motion.

Stuart, Q.C., contra.

OTTAWA, Oct. 10, 1892.

Quebec.]

PARADIS v. BOSSÉ.

Costs of proceedings before Exchequer & Supreme Courts of Canada—Solicitor and client—Quantum meruit—Parol evidence—Art. 3597, R. S. Q.

In proceedings before the Exchequer and Supreme Courts, there being no tariff as between attorney and client, an attorney has the right to establish the *quantum meruit* of his services by oral evidence in an action for his costs.

Appeal dismissed with costs.

Mr. Belcourt and *Mr. Mackay* for appellant.
Mr. Casgrain, Q.C., for respondent.

OTTAWA, Oct. 10, 1892.

Quebec.]

EMERALD PHOSPHATE CO. v. ANGLO-CONTINENTAL GUANO WORKS.

Mining lands—Bornage—Injunction—Appeal—Jurisdiction—R. S. C., ch. 9.

In case of a dispute between adjoining proprietors of mining lands, where an encroachment is complained of and it appears that the limits of the respective properties have not been legally determined by a *bornage*, the Court of Queen's Bench (Appeal side) held that an injunction would not lie to prevent the alleged encroachment, the proper remedy being an action *en bornage* (M. L. R., 7 Q. B. 196).

On appeal to the Supreme Court of Canada:—

Held, that as the matter in controversy did not put in issue any title to land where the rights in future might be bound, the case was not appealable. R. S. C., ch. 139, sec. 29 (*b*).

Appeal quashed with costs.

Laflamme, Q.C., and *Cross* for the appellant
McCarthy, Q.C., and *Foran* for the respondent.

OTTAWA, Oct. 6, 1892.

Quebec.]

TREMBLAY v. BERNIER.

Notarial Code—R. S. Q., Art. 3871—Board of Notaries—Disciplinary powers—Prohibition.

When a charge derogatory to the honour of the profession of

notary is made against a notary under the provisions of the Notarial Code, R. S. Q., Art. 3871, which amounts to a crime or felony, the Board of Notaries has jurisdiction to investigate it without waiting for the sentence of a Court of criminal jurisdiction.

Appeal dismissed with costs.

Belcourt, Q.C., for the appellant.
Frémont and *Languedoc* for the respondents.

Quebec.] OTTAWA, Nov. 2, 1892.

THE RICHELIEU ELECTION CASE.

Election petition—Status of petitioner—Preliminary objection—Lists of voters—Dominion Elections Act, R. S. C., ch. 8, secs. 30 (b), 31, 33, 41, 54, 58 & 65—The Electoral Franchise Act—R. S. C., ch. 5, sec. 32.

Held, affirming the decision of Gill, J., Where the petitioner's status in an election petition is objected to by preliminary objection, the evidence of his being entitled to petition against the return of the respondent being susceptible of easy proof by the production of the voters' list actually used, or a copy thereof certified by the clerk in Chancery, (R. S. C., ch. 8, secs. 41, 58 & 65, R. S. C., ch. 5, sec. 52,) the production at the *enquête* of a copy certified by the revising officer of the list of voters upon which his name appears, but which has not been compared with the voters' list actually used at said election, is insufficient proof. Gwynne and Patterson, JJ., dissenting.

Appeal dismissed with costs.

Morgan & Gemmill for appellant.
Belcourt & Plamondon for respondent.

Nova Scotia.] OTTAWA, Oct. 10, 1892.

BRITISH AMERICA ASSURANCE CO. v. LAW.

Marine Insurance—Insurable interest—Insurance on advances—Construction of policy.

A policy of marine insurance on the barque Lizzie Perry was issued by the British American Assurance Company to W. L. & Co., managing owners of the vessel. The first part of the policy read as follows: "L. & Co. on account of owners, loss if any,

payable to L. & Co., do make insurance and cause to be insured, lost or not lost, the sum of $2,000, on advances upon the body, tackle, etc. The policy was on a printed form, but the words "on advances" were inserted in writing. The remainder of the instrument was applicable to insurance on a ship only.

To an action on this policy the defence was that it only insured advances by the owners, which were not a proper subject of insurance, and the policy was, therefore, void. It was shown that L. & Co. had expended considerable money in repairs on the vessel.

Held, affirming the judgment of the Supreme Court of Nova Scotia, that the rule *ut res magis valeat quam pereat* required the policy to be construed, if possible, so as to make it a valid instrument, and this could be done either by striking out the words "on advances" as mere surplusage, or treating them as being a mere immaterial reference to the inducement which led the owners to insure the ship.

Appeal dismissed with costs.

Henry, Q.C., for appellants.
Borden, Q.C., for respondents.

OTTAWA, Oct. 10, 1892.

Nova Scotia.]

CHANDLER ELECTRIC CO. v. FULLER.

Negligence—Manufacture of electricity—Discharge of steam—Damage to adjoining property.

F. was owner of a warehouse in the City of Halifax, used for storing iron, and had occupied the same for some twenty years. In 1889 the Chandler Electric Company established a station for generating electricity on the adjoining premises. Attached to the engine used by the Company in said business was a condenser which passed through the floor of their premises and discharged into the dock below, at a distance of some twenty feet from said warehouse. In March, 1889, the warehouse was found to be full of steam, which fact was communicated to the officers of the Company, who stated that they could not understand how it could have been caused by their engine. The steam continued to enter the warehouse, injuring the iron therein, and in 1890 an action was commenced by F. against the Company for such damage. The Company contended, as a defence to the action, that they were using the latest and best improvements in machinery

for their business, and that they operated the same in a proper manner and without negligence; that the injury, if caused by their engine, was due to the defective state of the plaintiff's premises; and that they were acting in pursuance of statutory powers contained in their act of incorporation, and were, therefore, exempt from liability. At the trial, judgment was given against the Company, and on appeal to the full court the Judges were equally divided.

Held, affirming the judgment of the Supreme Court of Nova Scotia, that the act causing the injury violated the rule which does not permit a person, even on his own land, to do an act which, lawful in itself, yet necessarily causes injury to another, and, especially as the injury continued after notice to the Company, the plaintiffs were entitled to recover damages therefor.

Appeal dismissed with costs.

F. H. Bell for the appellants.

Newcombe for the respondents.

OTTAWA, Oct. 10, 1892.

Nova Scotia.]

CROWE v. ADAMS.

Sheriff—Action against—Trespass or trover for seizing goods—Justification—Necessity to show judgment—Title to goods—Married Woman's Property Act (R. S. N. S. 5th Ser., c. 74).

A sheriff having seized goods under execution against Donald A., the wife of the execution debtor brought an action against him for trespass by such seizure, alleging that the goods seized were her separate property under the Married Woman's Property Act (R. S. N. S. 5th Ser., c. 74), and claiming also that the execution was void as her husband's name was Daniel and not Donald. On the trial the sheriff, under his plea of justification, put in evidence the writ of execution but did not prove the judgment on which it issued. The jury found that the plaintiff's right to the goods seized, whatever it was, was acquired from her husband after marriage, which would not make it her separate property under the act; they also found that the husband was well known by both names of Daniel and Donald. The trial judge held that the plea of justification was not proved by the production of the execution, but that proof of the judgment was necessary, and he gave judgment for the plaintiff, which was affirmed by the full court.

Held, reversing the judgment of the Supreme Court of Nova Scotia, that the action could not be maintained; that a sheriff

sued in trespass or trover for taking or converting goods seized under execution can justify under the execution without showing the judgment; *Hannon* v. *McLean* (3 Can. S. C. R. 706) followed; and that by the findings of the jury the goods seized must be considered to belong to the husband, which is a complete answer to the action.

Appeal allowed with costs.

Newcombe for the appellant.
Borden, Q.C., for the respondent.

OTTAWA, Oct. 10, 1892.

Nova Scotia.]

SMITH v. MCLEAN.

Bill of Sale—Affidavit of bona fides—Adherence to statutory form—Description of deponent—R. S. N. S. 5th ser., c. 94, ss. 4 & 11.

By R. S. N. S. 5th ser., c. 94, s. 4, every bill of sale executed in Nova Scotia must be accompanied by an affidavit by the grantor that it is given in good faith, etc., and, by sec. 11, such affidavit shall be, as nearly as may be, in the form given in schedules to the act. The prescribed form begins as follows—"I. A. B. of..... in the county of..... (occupation) make oath and say." In an affidavit accompanying a bill of sale given under this act the occupation of the deponent was not stated.

Held, per Strong, Gwynne and Patterson, JJ., that as the affidavit referred in terms to the bill of sale itself, in which the occupation of the grantor was mentioned, the statute was complied with and the instrument was valid.

Per Taschereau, J.—The onus was on the persons attacking the bill of sale to prove, by direct evidence, that the deponent had no occupation, which they had failed to do.

The judgment of the Supreme Court of Nova Scotia was reversed.

Appeal allowed with costs.

Whitman for the appellants.
Silver for the respondent.

OTTAWA, Oct. 10, 1892.

New Brunswick.]

VAUGHAN v. RICHARDSON.

Marine insurance—Charter party—Disbursements—Difference in freight—Guarantee of part owner—Consideration—Misrepresentation—Pleading—Evidence.

V., part owner and managing owner of the ship Eurydice,

chartered her to R. for a voyage from Savannah to Liverpool; the charterer was to pay a lump sum for freight, and the master to sign bills of lading at any rate of freight without prejudice to the charter party; if the actual freight exceeded the sum payable by the charter the master of the ship was to give bills for the difference to R., payable ten days after the arrival of the ship at Liverpool, and the disbursements were to be secured by similar bills. When the ship was loaded it was found that the difference in freight was in favour of R., and by arrangement with the son of V., the managing owner, who held a power of attorney to act as his agent, the master drew two bills of exchange on the agents of the ship at Liverpool, one for the amount of the disbursements and the other for the difference in freight; each in favour of R. and payable sixty days after sight.

The bills were accepted by the agents but were not paid at maturity, and notice of dishonour was given to V. who, on receiving it, sent another of his sons to the solicitors who held the bills for collection. This son stated to the solicitors that his father would like the matter to be held over until he could communicate with the other owners, which was acceded to, and an agreement was drawn up, in the form of a letter to the solicitors, requesting them to delay proceedings on the bill for disbursements until the ship arrived at St. John, N. B. (where V. lived), and guaranteeing immediate payment on her arrival, of that bill with cost of protest, etc.; and also of the bill for difference in freight. This agreement was taken to V. who signed it, and it was returned to the solicitors. When the ship arrived V. paid the draft for disbursements, but refused to pay the other on the ground that he had supposed they were both for disbursements, and that the solicitors had so stated to his son when the agreement was prepared. An action was then brought against V. on his guarantee to pay the draft for difference in freight, to which he pleaded that he had been induced to sign the same by fraud and misrepresentation.

On the trial of the action it was proved that the son who acted for V. at Savannah under a power of attorney had at first refused to sanction the drawing of the bill for difference in freight, but finally agreed to it on receiving a letter stating the circumstances and what the draft was for, which letter, as he stated in giving evidence, he had sent to V., but it was not produced; the son who had called upon the solicitors swore that they had told him

that both bills were for disbursements and had so stated to his father; in this he was contradicted by V. himself, who said in his evidence that his son had told him that the larger bill was for disbursements and the smaller for difference in freight. His counsel contended, on moving against the verdict in favour of R., that he was incapacitated by age and infirmity from giving reliable evidence.

It was admitted by counsel for V. that any misrepresentation made by the solicitors as to the nature of the drafts, was an innocent misrepresentation only, and not made with intent to deceive. A verdict was given for the plaintiff, which the full court sustained.

Held, affirming the judgment of the Supreme Court of New Brunswick (28 N. B. Rep. 364), that the verdict should stand; that the defence of misrepresentation set up at the trial was not open to the defendant under the plea of fraud, and should have been distinctly pleaded; that no application to amend by adding such a plea having been made at the trial, it could not be entertained now, in view of the length of time the case had been in litigation and the delays that had taken place; that even if the defence were available nothing could be gained by ordering a new trial, as no jury could help finding for the plaintiff under the evidence given by the defendant himself, which would have to be read to the jury, the defendant having died since the trial.

Appeal dismissed with costs.

Barker, Q.C., and *Palmer, Q.C.*, for appellants.

Hazen and *Curry* for respondents.

OTTAWA, Oct. 10, 1892.

New Brunswick.]

BUCK v. KNOWLTON.

Marine insurance — Application to agent — Neglect to forward — Liability of agent for — Privity of contract — Negligence — Trover.

B., wishing to insure his vessel, went to a firm of insurance brokers at St. John, N. B., to whom he gave an application for $800 insurance at 11 p. c. on a valuation of $2,500. The brokers sent the application by a clerk to K., the agent at St. John for an underwriter's company in Portland, Me., requesting a policy from his company. K. informed the clerk that he would not forward the application unless the valuation was put at $3,000, or the premium raised to 12 p. c. This was never acceded to by

the brokers, and two days after K. forwarded an application to his company putting the valuation at $3,000, and on the following day the vessel was burnt. The policy was sent to K., but recalled by telegram before it was delivered to B. or to the brokers, and was returned to the company. B. brought an action against K. claiming damages for negligence in not forwarding the application in proper time, with a count in trover for conversion of the policy.

Held, affirming the decision of the Supreme Court of New Brunswick that as K. never forwarded, nor undertook to forward, the application signed by the brokers on B.'s behalf, he owed no duty to B., and could not be liable for any negligence.

Held, further, that as the policy issued never ceased to be the property of the company, and was nothing more than an escrow in the hands of K., no action would lie against K. for its conversion.

Appeal dismissed with costs.

Palmer, Q.C., for appellants.

McLeod, Q.C., for respondent.

OTTAWA, Oct. 10, 1892.

Ontario.]

McDOUGALL v. CAMERON.

BICKFORD v. CAMERON.

Solicitor—Action for costs—Set-off—Mutuality—Appeal—Jurisdiction.

A firm of solicitors brought an action against certain clients on a bill of costs, to which action it was sought to set off a sum of money received by one of the solicitors from one of the clients for special services. The taxing officer allowed the set-off, but his decision was reversed on appeal.

Held, affirming the judgment of the Court of Appeal for Ontario, that, assuming the Court had jurisdiction to entertain the appeal, which was doubtful, the client was not entitled to set off, in an action by a firm, a sum paid to one of its members, the debts not being mutual; moreover, the money being paid to one of the solicitors for special services and not for services covered by the retainer to the firm, it could not be set off.

Held, per Taschereau, J., that the appeal was not from a final judgment within the meaning of the Supreme Court Act, and there was no jurisdiction to entertain it.

Appeal dismissed with costs.

Riddell & Nesbitt for appellants.

Ritchie, Q.C., for respondents.

OTTAWA, Oct. 10, 1892.

Ontario.]

WESTERN ASSURANCE CO. v. ONTARIO COAL CO.

Marine insurance—General average—Insurance on hull—Abandonment—Attempt to save vessel and cargo—Expense incurred—Liability of cargo to contribute—Average bond.

A schooner loaded with coal was stranded in Humber Bay near Toronto, and abandoned. The hull was insured but not the cargo, and notice of abandonment was given to the underwriters who secured the services of an experienced wrecker and a wrecking expedition, and attempted to save the vessel. It was considered advisable, and the best course in the interest of the owners of the cargo as well as the underwriters, to attempt to save the vessel and cargo together. Owing to stress of weather operations could not be begun for some days after the expedition was ready, and when the wreckers got to work a portion of the coal was taken out and attempts made to save the vessel, but without success, and she had to be abandoned. Before any of the cargo was delivered the owners and the underwriters executed an average bond by which, after a recital of the loss of the schooner, they respectively bound themselves to pay the losses and expenses incurred according to their respective shares in the vessel, her earnings as freight and her cargo, and that such losses and expenses should be stated and apportioned, in accordance with the established laws and usage of the province in similar cases, by a named adjuster. The adjuster apportioned the loss between the underwriters as owners of the material saved and the owners of the cargo, making the amount due from the latter $2,314, and an action was brought against them on the average bond to recover the same. The sum of $557 was paid into Court and liability beyond that amount was denied.

Held, affirming the judgment of the Court of Appeal (19 Ont. App. R. 41) of the Queen's Bench Division (20 O. R. 295) and of Boyd, C. (19 O. R. 462), that the average bond only obliged the owners of the cargo to pay what should be legally due according to the law of general average; that the cargo and the vessel were never in that common peril which gives the right to claim for general average; and that the sum paid into Court was sufficient to cover the cost which would have been incurred in saving the cargo by itself, and the underwriters were not entitled to recover more.

Appeal dismissed with costs.

Osler, Q.C., and *Chrysler, Q.C.*, for appellants.

Delamere, Q.C., for respondents.

MAGISTRATE'S COURT.

MONTREAL, Dec. 5, 1892.

Coram CHAMPAGNE, J.M.C.

DAOUST v. CANADIAN PACIFIC R. Co.

Railway Act, Sec. 194, 196 — *Liability of Railway Company for neglect to maintain fences—Animal killed on track of another company.*

HELD:—*That where an animal gets on to the track of a railway company through defects in the railway fence, and thence strays on to an adjoining railway, and is there killed by that company's engines, the first company is not liable.*

The plaintiff sued for the value of a horse which, he alleged, came upon the defendant's line of railway from the pasture in which it properly was, through a defective fence separating the defendant's line of railway from such pasture, and thence got upon the track of the Grand Trunk Railway, which immediately adjoined the defendant's railway and was not separated from it by any fence, and was killed upon the track of the Grand Trunk Railway. The defendants admitted the facts as alleged.

N. Charbonneau for plaintiff:—

The defendants are liable, inasmuch as the proximate cause of the accident was the defect in the fence, which the defendants were bound to maintain. If this fence had been in proper order, the accident would not have happened.

H. Abbott, Q.C., for defendants:—

The obligation of the Railway Company to fence its line is statutory, and their liability upon a breach of that obligation is limited by the statute. By sec. 194, if the company neglects to maintain proper fences, it is liable only for damages caused to animals by any of the company's engines or trains, and is consequently not liable for damage caused by the trains or engines of another company. The common law obligation to fence, under Art. 505, C. C., has been extended and enlarged by statute in the case of railway companies, compelling them to fence their whole line at their own expense, and their liability for the non-fulfilment of the obligation must consequently be limited to that expressed in the statute. As to the non existence of the fence between the two railway lines, the obligation by the statute would be upon each of the companies to fence as against the other, as the statute evidently intended the fencing to be for the purpose

of preventing animals from getting on the railway; so that in this case, the obligation would be upon the Grand Trunk Railway to maintain a sufficient fence to have prevented the horse from getting on to its railway. In any event, there is no liability shown upon the defendants.

McAlpine v. *G. T. R. Co.*, U. C. Q. B. at pp. 449-50.
Daniels v. *G. T. R. Co.*, 11 Ont. A. R., 471.
Burton v. *N. E. Ry. Co.*, L. R. 3 Q. B., 549.
Foucher v. *O. & Q. Ry. Co.*, 11 L. N., 75.

CHAMPAGNE, J.:—

"Considérant que par la loi la défenderesse est tenue de faire et d'entretenir toute la clôture de chaque côté de son chemin de fer;

"Considérant qu'à défaut de faire et d'entretenir cette clôture en bon ordre la défenderesse est responsable des dommages occasionnés par le fait que des animaux seraient tués sur sa voie par ses propres engins;

"Considérant que dans le cas actuel il est admis que le poulain du demandeur a été tué sur la voie du Grand Tronc par les engins de ce dernier, la défenderesse ne peut être tenue responsable; déboute l'action du demandeur avec dépens."

Nap. Charbonneau for plaintiff.
F. E. Meredith for defendants.

INSOLVENT NOTICES.

Quebec Official Gazette, Dec. 3 *&* 10.

Judicial Abandonments.

BEAULNE, Jacques, hotel-keeper, Montreal, Dec. 5.
BISSON, L. W., cigar-dealer, Montreal, Dec. 3.
BOURASSA, Philippe E., Hadlow Cove, Nov. 25.
GIGUÈRE, Joseph Hector, grocer, Montreal, Dec. 2.
GINGRAS, Charles E., Quebec, Nov. 29.

Curators Appointed.

BERNARD, Jos. S., Cap St. Ignace.—A. Toussain, Quebec, curator, Dec. 2.

BOURASSA, P. E., Hadlow Cove.—H. A. Bedard, Quebec, curator, Dec. 5.

CHISHOLM, Alexander, produce merchant, Montreal.—Riddell & Common, Montreal, curators, Nov. 25.

DAGENAIS, Amédée, Ste. Cunégonde.—Kent & Turcotte, Montreal, joint curator, Dec. 5.

MILES, Gabriel, Grand Pabos.—H. A. Bedard, Quebec, curator, Nov. 30.

Roy, Alfred, Thetford Mines.—H. A. Bedard, Quebec, curator, Sept. 2.

Upton Shoe Co., Upton.—J. O. Dion, St. Hyacinthe, curator, Dec. 3.

GENERAL NOTES.

Handcuffed Prisoners in the Streets.—The Home Secretary, in reply to an objection to prisoners being conveyed through the streets of Woolwich handcuffed, has written to the Woolwich Local Board of Health stating that orders have been issued that no prisoners other than those accused of serious crimes or likely to be violent, are in future to be handcuffed. The letter also states that the police have power to engage cabs when necessary.

Is it Larceny?—Is it a crime to steal electricity? Indeed, is that imponderable and elusive agent a commodity, and as such can it be stolen? These questions have been raised in a court in St. Louis, but the answer returned is not satisfactory. A man was charged with tapping a wire of an electric light company in order to get illumination free. The grand jury was in doubt as to whether he had been guilty of fraud, and, according to the reports, the judge failed to see that it was a case of petit larceny; consequently the man went free. It behooves the electric light companies to look into this matter. This is said to be the first case of the kind, but it is not likely to be the last The rights of the manufacturers of electricity will no doubt soon be fully established, and purloiners of the fluid will have to accept the natural consequences of their actions.—*N. Y. Tribune.*

Privilege From Arrest. — Mr. Justice Collins sat in the Queen's Bench Division, on October 25, for the purpose of trying cases, without having the assistance of a jury. One of the cases so disposed of was an action for damages for trespass and illegal distress, and in it the plaintiff himself gave evidence. Almost immediately after he had left the Court, and whilst he was in the immediate precincts of it, he was arrested by a policeman upon a magistrates' warrant, issued in consequence of the non-payment of parochial rates. Mr. Watt, later in the day, applied to his lordship for an order that the plaintiff should be released from custody. The learned counsel said that the rule was that a suitor or witness was protected from arrest whilst going to or returning from the Court, unless the arrest should be for a criminal offence, or by way of punishment. In the case in question there was no criminal offence, nor was the arrest to be by way of punishment, because the defaulter would at any time be released upon payment of the amount due.—Mr. Justice Collins thought that the warrant was simply a process to enforce payment of the rate, and that the witness was privileged from arrest. He therefore ordered the policeman to release his prisoner. This order was at once obeyed, and the plaintiff was set at liberty.

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