THE

LEGAL NEWS.

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CURRENT TOPICS AND CASES.

The November appeal list at Montreal disclosed one result of the forced abridgement of the September term—the list showed an increase of four cases. The number of new appeals entered between the two terms was 22. A noticeable feature of recent calendars is the large proportion of appeals from the country districts. In the 69 cases on the November list, for instance, there are 44 Montreal appeals, and 25 from the other districts, as follows:—8 from Ottawa, 7 from St. Francis, 2 from Bedford, and the same number from Terrebonne, St. Hyacinthe and Richelieu, 1 from Joliette and 1 from Iberville.

A case determined in the *Cour de Cassation* of Belgium, reported in Sirey, 92.4.1., presented a question similar to that which arose in the cases of *Benning* v. *Thibaudeau*, and the *Ontario Bank* v. *Chaplin*, in our own courts some years ago, (M. L. R., 2 S. C. 338: M. L. R., 5 Q. B. 407, 425), upon which there was great divergence of opinion amongst the judges. The question was this: Is a creditor entitled to rank for the full amount of his claim

upon the separate estates of insolvent debtors jointly and severally liable for the amount of his debt, or is he obliged to deduct from his claim any amount previously received from the estates of the other parties jointly and severally liable therefor? Mr. Justice Mathieu, in the Superior Court, held that any amount previously received had, in such case, to be deducted from the claim. But this judgment was reversed by Judges Torrance, Jetté and Loranger in the Court of Review. In the Court of Appeal, Mr. Justice Mathieu's judgment was unanimously restored. In the Supreme Court, Chief Justice Ritchie and Mr. Justice Taschereau took the same view as the Court of Appeal, but Justices Strong and Fournier adopted the conclusions of the Court of Review. The Belgian Cour de Cassation, in the judgment referred to, upholds the views of our Court of Appeal, and those of Chief Justice Ritchie and Mr. Justice Taschereau, in the Supreme Court, and of Mr. Justice Mathieu, in the Superior Court.

The Supreme Court of Missouri is not disposed to extend exemptions from jury duty. A dentist having claimed exemption as a practitioner of medicine, the Court said if the applicant was exempt from jury duty because, as he alleged, he treated professionally 'diseases of the oral cavity,' so also would his professional brother be exempt, who, with equal scientific skill, treated diseases or malformations of the feet, and who was content to be styled a corn doctor. *State* v. *Fisher*, 22 L. R. A. 799.

NEW PUBLICATIONS.

THE PATENT LAW OF THE DOMINION OF CANADA, by John G. Ridout, barrister, etc., of the firm of Ridout & Maybee, solicitors of Patents. Toronto, Rowsell & Hutchison, Publishers, 1894, pp. 590. Cloth, $5.50. Half law calf, $6.

This is the first treatise on the Patent law of Canada. About 1100 reported cases have been examined and noted under the

appropriate headings. It is evident that the author has expended much time and care in the preparation of the work. He has the great advantage of being not merely a barrister, but also a patent solicitor of nine years' experience, superadded to the practical knowledge acquired in his former profession of civil engineer. The author, it may be mentioned, had the distinction, in 1863, of appearing at the head of the list of all those who went up for examination at Her Majesty's Staff College, Sandhurst, the leading school of the British army for engineering, mathematics, and scientific learning, and open to the whole of the army. Lieut. J. G. Ridout, then of the 100th (Canadian) Regiment, was not only at the head of the list, but was more than 200 marks above the next man.

The compilation is very complete. The text of the Patent Act in the body of the work includes all amendments to date. Besides the Patent Office Rules and Forms, there are inserted a number of general forms relating to patents and to practice in the Exchequer Court of Canada, in *scire facias* and other cases. Mr. Ridout must be complimented upon the ability with which he has executed the formidable task proposed to himself, and he has certainly earned the thanks of all who have occasion to examine any subject connected with this branch of law which is rapidly growing in importance. We can commend the work with confidence to the attention of our readers, and trust that it will have an extensive circulation throughout all the provinces of the Dominion.

TABLES, for ascertaining the present value of vested and contingent rights of Dower, Curtesy, Annuities and of other life estates, Damages for death or injury by wrongful act, negligence or default. Computed and compiled by F. Giauque, A.M., and H. B. McClure, A.M., members of the Cincinnati Bar. Cincinnati, Robert Clarke & Co., publishers.

The tables comprised in this work are of great value, and give the results of long and intricate calculations. They are indispensable to accountants and solicitors who need to have at hand a trustworthy manual to which to refer on the subjects of annuity, life estates, etc. The work is very clearly printed and issued in a neat and substantial form.

SUPREME COURT OF CANADA.

Ottawa, 13 Oct.. 1894.

Quebec.]

McKay v. Hinchinbrooke.

Appeal—Supreme and Exchequer Courts Act, R. S. C., ch. 135, secs. 24 and 29—Costs.

Held, that a judgment in an action by a ratepayer contesting the validity of a homologated valuation roll (*a*), is not a judgment appealable to the Supreme Court of Canada under section 24 (*g*) of the Supreme and Exchequer Courts Act; (*b*) and does not relate to future rights coming under sub-sec. (*f*) of sec. 2, of the Supreme and Exchequer Courts Act.

Held, also, that the valuation roll sought to be set aside in this case having been duly homologated and not appealed against within the delay provided in art. 1061 M. C., the only matter in dispute between the parties was a mere matter of costs, and therefore the Court would not entertain the appeal,—following *Moir* v. *Corporation of the Village of Huntingdon* (19 Can. S. C. R. 363).

Appeal dismissed with costs.

Geoffrion, Q. C., & Brossoit, Q. C., for appellant.

Maclaren, Q. C., & Laurendeau, for respondents.

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9 October, 1894.

Quebec.)

Bury v. Murray.

Absolute transfer—Commencement of proof by writing—Oral evidence —When inadmissible—Arts. 1233, 1234 C. C.—Prête-nom—Compensation—Defence—Taking advantage of one's own wrong.

Verbal evidence is inadmissible to contradict an absolute notarial transfer, even where there is a commencement of proof by writing not amounting to a full admission. Art. 1234 C. C.

A defendant cannot set up by way of compensation to a claim due to plaintiff, a judgment (purchased subsequent to the date of the action) against one who is not a party to the cause, and for whom the plaintiff is alleged to be a *prête-nom*.

In an action to recover an amount received by the defendant for the plaintiff, the defendant pleaded, *inter alia*, that the action was premature inasmuch as he had got the money irregularly

from the treasurer of the Province of Quebec on a report of distribution of the prothonotary before all the contestations to the report of collocation had been decided.

Held, affirming the judgment of the Court below, that this defence was not open to the defendant as it would be giving him the benefit of his own improper and illegal proceeding.

Appeal dismissed with costs.

Barnard, Q. C., and *Lafleur*, for appellant.
Martin, for respondent.

Quebec.] 8 November, 1894.

LABERGE v. EQUITABLE LIFE ASSURANCE SOCIETY.

Appeal—Amount in dispute—54–55 *Vic., ch.* 25, *sec.* 3, *sub-sec.* 4.

By virtue of sub-sec. 4 of sec. 3 of ch. 25 of 54–55 Vic., in determining the amount in dispute in cases in appeal to the Supreme Court of Canada, the proper course is to look at the amount demanded by the statement of claim, even though the amount in controversy in the court appealed from was less than $2,000,—the plaintiff having obtained a judgment in the court of original jurisdiction for less than $2,000, and not having taken a cross appeal upon the defendants appealing to the intermediate Court of Appeal. *Levi* v. *Reed*, (6 Can. S. C. R. 482) affirmed and followed. Gwynne, J., dissenting.

Motion to quash refused with costs.

Laflamme, for appellant.
Macmaster, Q. C., for respondents.

Quebec.] 11 October, 1894.

WEBSTER v. SHERBROOKE.

Appeal—Right of—Petition to quash by-law under sec. 4389 *R. S. P. Q.—R. S. C., ch.* 135, *sec.* 24 (*g*).

Proceedings were commenced in the Superior Court by petition to quash a by-law passed by the Corporation of the City of Sherbrooke under sec. 4389 R. S. P. Q., which gives the right to petition the Superior Court to annul a municipal by-law. The

judgment appealed from, reversing the judgment of the Superior Court, held that the by-law was *intra vires*.

On motion to quash,

Held, that the proceedings being in the interest of the public, equivalent to the motion or rule to quash of the English practice, the court had jurisdiction to entertain the appeal, under sub-sec. g, of sec. 24, ch. 135 R. S. C. *Sherbrooke* v. *McManamy* (18 Can. S. C. R. 594) and *Verchères* v. *Varennes* (19 Can. S. C. R. 356) distinguished.

Motion refused with costs.

Brown, Q. C., for motion.

Panneton, Q. C., contra.

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9 October, 1894.

Ontario.]

TRENT VALLEY WOOLLEN MFG. CO. v. OELRICHS.

Sale of goods by sample—Right of inspection—Place of delivery—Sale through brokers—Agency.

C. & Co., brokers in New York, sent a sample of wool to the T. Mfg. Co. at Campbellford, in Canada, offering to procure for them certain lots at certain prices. After a number of telegrams and letters between the company and C. & Co., the offer was accepted by the former at the price named for wool "laid down in New York," and payment was to be in six months from arrival of wool at New York without interest. Bought and sold notes were respectively delivered to the company and the brokers, the latter signing the sold note. The wool having arrived the company would only accept it subject to inspection when it reached their place of business in Canada, to which the seller would not agree, and it was finally sold to other parties and an action brought against the company for the difference between the price realized on such sale and that agreed on with the brokers.

Held, affirming the decision of the Court of Appeal for Ontario (20 Ont. App. R. 673), that the brokers could be considered to have acted as agents of the company in making the contract, but, if not, the company having never objected to the want of authority in the brokers nor to the form of the contract, must be held to have acquiesced in the contract as valid and duly authorized.

Held, also, that there being no special agreement to the contrary, the place for inspection of the wool by the buyer was New York, where the wool was to be delivered, and it made no difference that the company had previously bought wool from the same party who had sent it to Campbellford to be inspected.

Held, further, that the evidence of a usage of the trade as to inspection offered by the company was insufficient, such usage not being shown to have been universal and so well known that the parties would be presumed to have had it in mind when making the contract, and to have dealt with each other in reference to it.

Appeal dismissed with costs.

Christopher Robinson, Q.C., & Chute, Q.C., for the appellants.
McCarthy, Q.C., for the respondents.

Ontario.] 9 October, 1894.

ALEXANDER v. WATSON.

Construction of agreement—Guarantee.

A., a wholesale merchant, had been supplying goods to C. & Co., when, becoming doubtful as to their credit, he insisted on their account being reduced to $5,000, and security given for further credit. W. was offered as security and gave A. a guarantee in the form of a letter as follows:—

"I understand that you are prepared to furnish C. & Co. with stock to the extent of $5,000 as a current account, but want a guarantee for any amount beyond that sum. In order not to impede their operations, I have consented to become responsible to you for any loss you may sustain in any amount upon your current account in excess of the said sum of $5,000, including your own credit of $5,000, unless sanctioned by a further guarantee."……

A. then continued to supply C. & Co. with goods, and in an action by him on this guarantee,

Held, affirming the decision of the Court of Appeal, Gwynne, J., dissenting, that there could be no liability on this guarantee unless the indebtedness of C. & Co. to A. should exceed the sum of $5,000; and at the time of action brought such indebtedness having been reduced by payments from C. & Co. and

dividends from their insolvent estate to less than such sum, A. had no cause of action.

Appeal dismissed with costs.

Christopher Robinson, Q.C., & Clarke, Q.C., for the appellant.
Delamere, Q.C., & English, for respondent.

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9 October, 1894.

Ontario.]

In re HESS MANUFACTURING CO.

EDGAR v. SLOAN.

Winding-up Act—Contributory—Promoter of company—Sale of property to company by—Rescission.

Two brothers named H., being desirous of purchasing a site for erecting a building in which to carry on the manufacture of furniture, and not having the means to do so, applied to S., father-in-law of one of them, for aid in the undertaking. S. obtained from the owners a conveyance of said site, the consideration being the erection of the building and running of the factory within a certain time, or, failing that, the sum of $3,000. The building was erected within the limited time and a company having been formed, the manufacturing business was started. S. was one of the provisional directors of the company, having subscribed for shares to the amount of $7,500, and subsequently the son of S. and the two brothers were appointed directors, through whom S. transferred the property to the company, having previously mortgaged it for $7,000 (it having cost $7,300), besides which some $5,000 had been expended on it, the money being supplied by the wives of the two brothers. On the property being transferred to the company 360 shares of the capital stock, of the value of $50 each, were allotted to S. as fully paid up shares and to include his former subscription. 234 of these shares were afterwards transferred by S. to his son and daughter. The company having failed, the liquidator appointed under the winding-up act, applied to the master to have S. placed on the list of contributories for the 360 shares. The master complied with this request to the extent of 126 shares standing in the name of S. when the winding-up proceedings were commenced, holding that S. purchased the property as trustee for the company and so gave no value for the shares assigned to him. This ruling

was affirmed by the Divisional Court (23 O. R. 182), but reversed by the Court of Appeal (21 Ont. App. R. 66).

Held, affirming the decision of the Court of Appeal, that the circumstances disclosed in the proceedings showed that S. did not purchase the property as trustee for the company, but could have dealt with it as he chose, and having conveyed it to the company as consideration for the shares allotted to him, such shares must be regarded as being fully paid up, the master having no authority to enquire into the adequacy of the consideration.

Held, also, that S. was a promoter and as such occupied a fiduciary relation to the company, and having sold his property to the company through the medium of a board of directors, who were not independent of him, the contract might have been rescinded if an action had been brought for that purpose.

Where a promoter buys property for his company from a vendor who is to be paid by the company when formed, and by a secret arrangement with the vendor, part of the price comes, when the agreement is carried out, into the promoter's hands, that is a secret profit which the latter cannot retain; and if any part of such secret profit consists of paid up shares issued as consideration for the property so purchased, they may be treated while held by the promoter, as unpaid shares for which the promoter is liable as a contributory.

Appeal dismissed with costs.

S. H. Blake, Q. C., and *Raney*, for the appellant.

Moss, Q. C., and *Haverson*, for the respondent.

CONFLICTING EVIDENCE—FUNCTIONS OF THE JURY.

We have been asked to publish the following opinion delivered by the late Mr. Justice Henry, of the Supreme Court of Canada, in *Grand Trunk Ry. Co.* v. *Wilson*, an unreported case. Mr. Justice Henry's opinion expressed the judgment of the Court.

This is an action brought by the respondent to recover damages for injuries sustained by him by being struck by a locomotive engine of the appellants, at the station of the Vermont Central Railway Company at Saint Johns, in the Province of Quebec. His left arm was lacerated and the bone of it fractured, and it had to be amputated. The defence is in substance

an allegation of contributory negligence of the respondent to such an extent that by law he cannot recover. The principles of law involved are, in my opinion, identical with those decided by the House of Lords in the case of *Dublin, Wicklow & Wexford Railway Company* v. *Slattery* (L. R. 3 App. Cases, 1155), and the circumstances are also substantially identical. In that case it was decided that "where there is conflicting evidence on a "question of fact, whatever may be the opinion of the judge who "tries the case, as to the value of that evidence, he must leave "the consideration of it for the decision of the jury, and it was "held that that was a case that was properly left to the jury, for "that where there was contradictory evidence on facts, the "jurors, and not the judge, must decide upon them." In that case it was also held that "where notices have been put up by a "railway company forbidding persons to cross the line at a par-"ticular point, but these notices have been continually disre-"garded by the public, and the company's servants have not "interfered to enforce their observance, the company cannot, in "the case of an injury occurring to any one crossing the line at "that point, set up the existence of such notices by way of "answer to an action for damages for such injury." It is claimed that the weight of evidence as to certain controlling positions in the case was in favor of the appellants, and that the verdict should therefore be set aside. In the case just quoted the evidence on behalf of the company was that of ten against three as to the question of the engineer on approaching the station whistling or ringing the bell. This was the point on which the decision of the case turned, and the finding of the jury was sustained. In this case several witnesses proved the bell of the engine was rung and the whistle sounded, but that was contradicted more fully than in the case referred to, and the jury found in favor of the latter. The plaintiff's witnesses established a clear case of negligence on the part of the engine driver of the appellants, and such as I think it would be unjustifiable in a judge to withdraw from a jury. The jury having decided the issue in favor of the respondent, we are asked to set aside the verdict and order a new trial, or to non-suit the respondent. Have we the right or power to do either, is the next question to be considered ?

The evidence shows that the station in question was in the suburbs of Saint Johns, where two streets crossed several shunt-

ing and other tracks of the Vermont Central Railway, that the appellant company had an engine house a short distance from where the respondent was injured, and had from the Central Vermont Railway Company the privilege of using one of their tracks to it. On the occasion in question the driver of one of the locomotives of the appellants proceeded with one of their locomotives in daylight from the engine house toward the station. The respondent was then going from the office of the Central Vermont Company to a warehouse on the other side of the tracks, and distant from one to two hundred yards. Whilst on the same track that the locomotive was using, and with his back toward the point from which the locomotive was coming, he was struck and injured. Contradictory statements as to whether or not he was then on the regular street crossing were made by several witnesses on each side, but the jury did not specifically decide that contested point.

On the question submitted to the jury, "Did the engineer, em-"ployees and servants of the defendants so engaged in running "the said locomotive * * * over the said line of railway, "and while the same was crossing and passing along the said "public highway, give due notice of danger by ringing the bell "or sounding the whistle of the locomotive, or both, answered "'No—sufficient warning was not given.'" If such was the case, there was then negligence, for the consequences of which the appellants are answerable. It is, however, contended the weight of the evidence was the other way, and that, therefore, the verdict should be set aside. It is a question, however, of the credibility of witnesses, and unless we see that the finding of the jury was the result of improper bias or a clear mistake of the rules of evidence, I do not see how any court could properly set aside such finding. I have said that, in my opinion, the case was properly submitted to the jury. Lord Hatherly, in the case before cited, at p. 1168 says: "I will in the first place state my "concurrence with Mr. Justice Barry's opinion in the Court be, low, viz.: 'When once a plaintiff has adduced such evidence as, "'if uncontradicted, would justify and sustain a verdict, no "'amount of contradictory evidence will justify the withdrawal "'of the case from the jury.'" Applying that doctrine to the present case, how can it be contended that there was not sufficient evidence on the part of the respondent, if uncontradicted, to justify and sustain the verdict herein? Then arises the

question whether, the jury having exercised their proper and peculiar functions in deciding upon contradictory evidence, the court can set aside their verdict, even if the verdict was not satisfactory in the view of the court. On this point, in the case referred to, Lord Hatherly says: "I conclude as I began, by saying that I do not hold it to be the office of the judge to weigh or balance conflicting evidence, however strongly the evidence on one side may, in his judgment, preponderate; that question is for the jury." Lord O'Hagan, in the same case, p. 1182, said, in reference to the question of the "whistling": "Ten witnesses for the defendants swore that the whistling occurred in the proper time and in the usual way; three witnesses for the plaintiff swore that, being in a position if it so occurred the sound should have reached their ears, they did not hear it. It is impossible not to be struck by the apparent weight of the defendants' proof. But, as was observed in the Irish Court of Common Pleas, the jury saw the witnesses, and the judge did not condemn the verdict. And whether it was right or wrong the jurors alone were competent legally and constitutionally to decide between the ten who testified on the one side and the three who testified on the other."

"It was urged, and the authority of the eminent judge was vouched to sustain the suggestion, that proof of the want of hearing was no material proof at all. But this seems to me untenable. Assuming that a man stands in a certain position, and has possession of his faculties, the fact that he does not hear what would ordinarily reach the ears of a person so placed, and with such opportunities, seems to me to be manifestly legal evidence, which may vary in its value and persuasiveness, which may in some instances be of small account, and in others be the strongest and the only evidence possible to be offered; but at all events it cannot be withheld from the jury. And if this be so, there was here a conflict of testimony on which the jurymen, *and they alone*, were competent to pronounce."

Lord Selbourne, in the same case, said: "But it seems to me impossible to deny that the evidence of persons who, standing in a position where whistling must have been audible, say they heard none, was proper to be left to the jury on the issue whether there was whistling or not, however strong the affir-

" mative evidence might be by which it was met; and the jurors " in this case have found that issue in the negative." Again: " If the jury (believing that the usual whistling was on this " occasion omitted) entertained the opinion that the deceased " came to his death while using the crossing for a legitimate " purpose and in a not unusual manner, I cannot say that there " was no evidence on which such a conclusion could be founded."

Lord Blackburn, in that case said: " It is said that we en- " croach on the province of the jury by saying that not to look " along the line before crossing it is a circumstance that, un- " answered, shows want of reasonable care. I can only answer " by citing the language of the judgment in *Ryder* v. *Wombell*, " L. R. 4 Exch. 32, which, I think, is sound law. It is there " said, at p. 40: 'We quite agree that the judges are not to " 'determine facts, and, therefore, where evidence is given as to " 'any facts, the jury must determine whether they believe it or " 'not.'"

Lord Gordon, in the same case, said: " I think the weight of " the evidence was on the side of the defendants, and that the " jury should have so found, but the jurors were the proper arbi- " trators, and were entitled to decide the point before them as " they did."

As to the question of contributory negligence, His Lordship said: " I think the evidence pointed pretty conclusively in one " direction, but I think the jurors were the proper persons to " deal with the evidence in regard to this issue, as they were in " regard to the first, and that the judge at the trial rightly left " the decision to the jury. I think a case of disputed facts ought " not to be withdrawn from a jury merely because the evidence " seems to the judge to point all in one direction. Whether the " evidence be strong or conflicting or weak, it is equally the " province of the jury to decide upon it, and I think a presiding " judge would be arrogating to himself functions not belonging " to him if he were, on the trial of a question of fact, to withdraw " the evidence from the jury and to decide on it himself."

The judgments I have just quoted from were delivered in 1878, and are the latest I have been able to find. The doctrine laid down I feel bound by, and it is clearly applicable to this case. The jury having expressly found on the two leading points of the case, I consider myself bound by the decision in the case so recently and unequivocally decided, and from which I have

made the foregoing extracts. It was contended that the respondent, when injured, was a trespasser on the track of the appellants, and being so there illegally, he is therefore debarred from recovering damages for the injuries he sustained. I cannot adopt that proposition as at all applicable to the circumstances in this case. It appears from the evidence and the sketches and plans of the station exhibited on the argument that there are no gates or fences to prevent parties crossing the line. There are several railway tracks crossing two streets, and at the station there is necessarily a great deal of traffic and shunting by the two lines operating through it. The public, if not specially invited to do so, have been permitted by the railway officials to cross and recross the tracks at their pleasure, and therefore the appellants substantially, though perhaps only impliedly, undertook to use the necessary caution and diligence to prevent injury to any of the public so crossing the tracks in question. That is, under the circumstances, the necessary legal responsibility undertaken by the railway companies using that station. It may not have been satisfactorily shown that the respondent when injured was really on the public road crossing, as on that point there was conflicting evidence, and the jury did not so unquivocally find as to it.

I consider it, however, unimportant to the decision of this case whether he was on the road crossing or very near to it. The railway companies having permitted the public to cross their tracks, and having no gates or fences at the station, and having their buildings on both sides of the tracks, any one crossing them had good reason to expect the greatest possible care and caution would be observed in the use of those tracks. When the respondent was injured he was going from an office of the Vermont Central Railway Company to their freight depot, which, being on the opposite side of the tracks, required him to cross them. He was on one of the tracks, and upon or very close to the road crossing, with his back toward the direction from which came the locomotive that injured him, and which came from the appellants' engine house a short distance off. The verdict, as I have indicated, negatives, in my opinion, the contention that either the bell of the locomotive was rung or the whistle sounded, and being so there is ample proof of negligence on the part of the appellants' servants. Independently, however, of that finding, we have the fact that neither the engine

driver nor his fireman saw the respondent until after he was struck by the locomotive. It is shown that the speed of the locomotive was slow, so that if a proper look-out had been kept by those in charge of it the respondent might have been warned or the locomotive stopped. The driver said that from the position he occupied on one side of the locomotive he could not see in front of it. I think it was culpable negligence to run a locomotive over the track in question without keeping a look-out ahead. And even had the bell been rung and the whistle sounded, the peculiar position of the track required not only a warning by the bell and whistle to parties crossing it, but the action of the driver himself by stopping the locomotive, if necessary, or by taking any other suitable means of preventing injury. Whether or not the respondent was lawfully on the track where and when he was injured, I think the appellants, under the circumstances, are estopped from saying he was unlawfully there. If, however, he was there unlawfully and as a trespasser on the track of the Vermont Central Railway Company, over which the appellant company had an easement, and the servants of the latter company, by the use of proper and necessary means, could have avoided doing him the injury complained of, the company is answerable for the negligence of its servants when causing the injury through the want of the employment of such necessary means.

For the reasons given, I think the appeal should be dismissed and the judgment below confirmed, with costs in all the courts.

CAT LEGATEES.

Even the most censorious critic must feel a certain amount of respect for the qualities of the heart of Miss Charlotte Rosa Raine, who by her will intended to provide comfortable maintenance for her dumb pets, which had probably solaced many an hour of her own life. Only a lawyer, however, can appreciate the wonderful crop of possible litigation that might have sprung out of the will had her kindly disposition moved her, instead of expressly limiting her gifts to the lives of her pets, to attempt to continue the provision to their progeny. The will makes a number of dispositions which no one can complain of as eccentric, and then, 'as regards her pussies,' she gives her dear old white puss Titiens, and her pussies tabby Rolla, tabby Jennefee, and black-and-white Ursula, to Ann Elizabeth Matthews, and she

directs her executors to pay her 12*l.* a year for the maintenance of each cat so long as it shall live. Her long-haired white puss Louise, and her black-and-white puss Dr. Clausman, she gives to her handmaiden Elizabeth Willoughby, and her black ebony-and-white Oscar to Miss Lavinia Sophia Beck; and her executors are directed to pay them also 12*l.* a year for each of these pussies so long as they shall live. All the remainder of her pussies she gives to the said Ann Elizabeth Matthews, and she directs her executors to pay her out of the balance of the dividends of her father's Lambeth Waterworks shares 150*l.* a year for their maintenance so long as any of them shall live, '*but this is not to extend to kittens afterwards born.*' There is also a direction to Ann Elizabeth Matthews to live out of this annuity in the village of Haylands (or elsewhere) in a cottage and garden for the maintenance of the said pussies, unless the Rev. William Martin Spencer is willing to permit the pussies to reside on the premises and in the garden at Pound.

There is an exquisite finish and roundness given to the bequest by that 'not to extend to kittens afterwards born.' The mind is almost unequal to grapple with the difficulties that would have arisen if, instead of this sweeping exclusion of all after-born kittens, she had, say, in the case of 'dear old' Titiens given the annuity in favour of Titiens for life, and after her death to all her kittens who should survive her. The first difficulty that strikes us is that 'kittens' is not a term which has any legal significance like 'issue' or 'children,' but probably the Court, dealing with a case of first impression, would feel itself constrained to hold that the term would not include 'grandkittens' or 'great grand-kittens.' There, however, would appear to arise a still greater difficulty. A gift to the 'children' or 'issue' of an individual *prima facie* means only the legitimate children or issue of that person. Could the claimants under the class of 'kittens of Titiens' contend to have their rights admitted under any inferior standard to that of legitimacy? If not, then by what expert evidence as to cat law, fortified by what oral testimony as to facts, could it be established that the issue of 'dear old Titiens' was born in cat-wedlock so as to answer the description according to the exacting standard of the English law of 'kittens afterwards born?' From these and many other deep and subtle difficulties we are saved by the merciful interposition of the words 'but this is not to extend to kittens afterwards born.'—*Law Journal* (London).