

Ct. of App.]

NOTES OF CANADIAN CASES.

[Ct. of App.]

culvert, and was allowed so to continue out of repair for a month. The deceased while lawfully travelling along the road, attempted to cross such trench in a waggon, from which he was thrown and killed. In an action for damages, it was alleged by the defendants that deceased at the time of the accident was intoxicated, and thus contributed to the accident. The judge before whom the action was tried, left it to the jury to say whether the deceased had so contributed to the accident, that but for want of reasonable care it would not have occurred. The jury answered this in the negative, and rendered a verdict in favour of the plaintiff.

Held, [affirming the decision of the Court of Q. B., who refused a rule *nisi* to enter a nonsuit], that the question of contributory negligence was one proper to be left to the jury.

C. Robinson, Q.C., and Shepley, for appeal.

G. H. Watson, contra.

From Q. B.]

MURRAY v. MCCALLUM.

Married Woman's Act—Separate property—Separate trading.

In order that the property of a married woman, who carries on a business for herself may be protected from executions against her husband, it is not necessary that she should live separate and apart from her husband, or that the business should be carried on in a house other than that in which the husband and his wife reside.

The plaintiff who was possessed of a sum of money (about \$300), felt dissatisfied with her husband's management of his business, his goods having been sold under execution for debt whilst residing on a rented farm, the sale not realizing sufficient to pay the arrears of rent and his debts; leaving, in fact, unpaid the debt for which the defendant in the present action had obtained execution. The husband had literally no means, and the plaintiff resolved to start hotel keeping, and agreed to give her husband \$15 a month for his services as bar-keeper, the duties of which he discharged, and lived with her in the hotel. It was shown by the evidence, that whilst thus engaged, she had had two partners in carrying on the hotel business. The defendant seized the goods in the hotel,

and in an interpleader issue, a verdict was rendered in favour of the plaintiff, which the Court in banco refused to set aside. On appeal to this Court,

Held [per SPRAGGE, C.J., and CAMERON, J.], that the facts showed the plaintiff to have had a separate trade within the Act, the husband not having the control of the business, but being hired for a particular duty.

Per BURTON, J. A.—It was not intended that there should be an inquiry under the Act as to the *bona fides* of such transactions; but that the fact of the husband's interference with the concurrence of the wife, deprived it at once of its separate character.

Per BURTON and PATTERSON, JJ.A.—That the interference of the husband with the business, as shown by the evidence, was such in reality as to prevent its being treated as the separate business of the plaintiff.

McCarthy, Q.C., and Laidlaw, for the appeal.
Bethune, Q.C., and Morrison, contra.

From C. P.]

HALE v. KENNEDY.

Appeal—Practice.

The Judge at *nisi prius* found a verdict in favor of the defendants, which the Divisional Court of the Common Pleas Division, in banco, reversed, and either determination was supported by the evidence according to the manner in which the facts were viewed and treated. This Court therefore refused to reverse the judgment of the Divisional Court, as it could not be said with certainty that it was wrong.

C. Robinson, Q.C., and Burrit, for the appeal.
Bethune, Q.C., and Deacon, Q.C., contra.

From C. P.]

OLIVER v. NEWHOUSE.

Landlord and tenant—Execution—Chattel Mortgage.

An appeal from the judgment of the Common Pleas (32 C. P. 91), allowed.

Per SPRAGGE, C. J.—That there was nothing upon which an execution against the goods of the son could operate from the time the tenancy was concluded; and that the Chattel Mortgage