

Divl Court.]

JOHNSON v. GRAND TRUNK RAILWAY CO.

[March 3.]

Railways—Accident at crossing—Negligence—Findings of jury—Release of cause of action—Settlement pending action—Validity of—Trial of issue as to.

In an action to recover damages for the death of the plaintiff's husband, who was killed at a railway crossing by a train of the defendants, the jury found that the engine bell was not rung on approaching the highway, nor kept ringing until the engine crossed it; that the deceased did not see the train approaching in time to avoid it, and that he had no warning of its approach; and assessed damages at \$1,000.

Held, that the plaintiff was entitled to judgment upon these findings, notwithstanding that the jury, to a question whether the deceased, if he saw the train approaching, used proper care to avoid it, answered, "We don't know."

After the action was at issue, an agreement was made between the defendants and the plaintiff, the latter an ignorant person, and without the advice of her solicitor, or other competent advice, whereunder she received \$500 from the defendants, and executed a release under seal of the cause of action. She afterwards repudiated the agreement, and paid back the \$500. At the trial the defendants set up the release.

Held, upon the evidence, that the release was ineffectual.

Held, also, that it was not necessary that a separate action should be brought to try the validity of the release.

Emeris v. Woodward, 43 Ch.D. 185, distinguished.

S. Livingstone for the plaintiff.

Oster, Q.C., for the defendants.

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FOWELL v. CHOWN.

[March 3.]

Patent for invention—R.S.C., c. 61, s. 46—Rights of prior manufacturer.

Section 46 of the Patent Act, R.S.C., c. 61, does not authorize one who has, with the full consent of the patentee, manufactured and sold a patented article for less than a year before the issue of the patent to continue the manufacture after the issue of the patent, but only to use and sell the articles manufactured prior to the issue of the patent.

E. G. Porter for the plaintiff.

Oster, Q.C., and *Clute*, Q.C., for the defendant.

Divl Court.]

TRIMBLE v. LANKTREE.

[March 3.]

Statute of Frauds—Contract not to be performed within a year—Executed contract.

The Statute of Frauds does not apply to a contract which has been entirely executed on one side within the year from the making, so as to prevent an action being brought for the non-performance on the other side.