

## HOLLINGER v. CANADIAN PACIFIC R.W. CO.

*Railways—Negligence—Ways—Crossing—Station yard—51 Vict., c. 29, s. 256 (D.).*

The defendants used part of a highway for station-yard purposes, eight tracks crossing it from west to east, the west end of the yard being less than eighty rods from the highway. The defendants in shunting some flat cars drew them from the east end of the yard to the west end, and then, after a pause, sent them in an easterly direction on another track, the shunting engine and tender following some distance behind on the next track to the south. The plaintiff, who was on the highway, attempted to cross after the flat cars had passed and was struck by the tender. There was no lookout man on the tender, and there was contradictory evidence as to the ringing of the bell at all, though at most it was not rung until the engine had run some distance towards the highway, and the whistle was not blown.

*Held, per HAGARTY, C.J.O.:* That there was sufficient in the general facts of the case to justify the finding of the jury in favour of the plaintiff, and that that verdict should not be disturbed.

*Per OSLER and MACLENNAN, JJ.A.:* That the provisions of 51 Vict., c. 29, s. 256 (D.), applied, and that the finding of the jury was right.

*Per BURTON, J.A.:* That section 256 did not apply to shunting in a station yard, and that there had been misdirection on that point, but that the defendants had no right to use the highway as part of their station yard, and were therefore trespassers *ab initio*, and liable for all damages resulting from their dangerous user thereof.

In the result the judgment of the Queen's Bench Division, 21 O.R. 705, was affirmed.

*R. M. Wells, Q.C.,* for the appellants.

*Elgin Myers* for the respondents.

## HIGH COURT OF JUSTICE.

*Queen's Bench Division.*

Dist. Court.]

IN RE UNCLE AND PROFF.

[Dec. 24.

*Assignments and preferences—R.S.O., c. 124 Assignment for benefit of creditors—Benevolent society Interest of debtor in fund—R.S.O., c. 172, s. 11.*

An assignment by a debtor of all his estate for the benefit of his creditors under R.S.O., c. 124, is a voluntary assignment, in the sense that it is optional with the debtor whether he makes it or not; but the form in which it is made, and the effect of such form not being optional with him, in this sense it is not voluntary; and having regard to the provision of s. 11 of the Benevolent Societies' Act, R.S.O., c. 172, such an assignment does not pass to the