

dispute was a sum of money less than \$1,000, and therefore not sufficient to give jurisdiction to the court. Appeal quashed with costs.

W. J. Clark, for motion. *Shepley*, K.C., and *Macdonell*, contra.

Ont.]

C.P.R. Co. v. BLAIN.

[Nov. 30, 1903.]

Railway—Injury to passenger—Duty of conductor.

B., a passenger on a railway train, was assaulted shortly after beginning his trip by an intoxicated fellow-passenger. He complained to the conductor who promised to get a policeman at the next station, but failed to do so. The assailant having become more quiet B. did not anticipate a further attack, but was assaulted a second time, which was also reported to the conductor who took no action and a third assault having been made, B. left the train and completed his journey on the following day. In an action against the railway company B. obtained a verdict for \$3,500 which was sustained by the Court of Appeal. On appeal to the Supreme Court of Canada,

Held, affirming the judgment of the Court of Appeal (5 O.L.R. 334) that the company was liable; that it was the duty of the conductor on being informed of the first assault to take precautions to prevent a renewal, and his failure to do so gave B. a right of action.

Held, also, that as B. did not anticipate the second assault the conductor could not be assumed to have foreseen it and the jury having evidently given damages for that as well as the third, the amount recovered should be reduced to \$1,000 and a new trial had if this sum was not accepted. Appeal allowed without costs.

Johnston, K.C., and *Denison*, for appellants. *Riddell*, K.C., and *D. O. Cameron*, for respondent.

Ont.]

THOMPSON v. COULTER.

[Nov. 30, 1903.]

Executors—Action by—Evidence—Corroboration—R.S.O. (1897) c. 73, s. 10.

In an action by executors to recover money due from C. to the testator it was proved that the latter when ill in a hospital had sold a farm to C. and \$1,000 of the purchase money was deposited in a bank to testator's credit; that subsequently C. withdrew this money on an order from testator who died some weeks after when none was found on his person nor any record of its having been received by him. C. admitted having drawn out the money, but swore that he had paid it over to testator. No other evidence of any kind was given of such payment.

Held, reversing the judgment of the Court of Appeal that a *prima facie* case having been made out against C. and his evidence not having been