as to whether they would come in under the Winding-up Act or not, but if they did not they of course required leave to commence their action.

Held, that a secured creditor has a right to apply for and obtain leave to bring an action to enforce his security, but that it is not optional for him to either prove his claim in a winding-up or else proceed with an action to enforce it, and if he does commence an action it is still compulsory on him to proceed before the liquidator under ss. 63, et seq. of the Act.

F. Peters, K.C., for summons. *W. E. Oliver*, for liquidator.

Full Court.] BEATON *v.* SJOLANDER. [Jan. 26.

County Court—Practice—Defendant outside county—Jurisdiction—Judgment by default—Application to set aside and for leave to defend—Waiver.

In the plaint in an action in the County Court of Yale it appeared that the defendants resided in Vancouver outside the County of Yale and the plaintiff's claim was described as being "against the defendants as makers of a promissory note for $179.12, dated 12th March, 1902, payable two months after date." Judgment for plaintiff was signed in default of a dispute note, but afterwards defendants filed a dispute note (what it contained was not shewn) and applied to Spinks, Co. J., to have the judgment set aside and for leave to defend on the merits. On the hearing of the application it appeared that the Court had jurisdiction as the note sued on was produced on affidavit and it shewed on its face that it was made and payable within the County of Yale.

Held, on appeal from the County Judge who dismissed defendant's application, that County Court process should shew jurisdiction on its face, but the defendants by filing the dispute note and applying for leave to defend on the merits had waived their right to object to the jurisdiction.

Sir C. H. Tupper, K.C., for appellants. *Kappele*, for respondent.

UNITED STATES DECISIONS.

RAILWAYS.—One who enters and rides upon a train which he knows, or by the exercise of reasonable diligence could know, is prohibited from carrying passengers, is held, in *Purple* v. *Union Pac. R. Co.* (C.C.A. 8th C.) 57 L.R.A. 700, to be a trespasser and not a passenger, and the only duty of the railway company toward him is held to be to abstain from wanton or reckless injury to him.

A passenger who leaves his car of his own volition for some purpose of his own not incident to the journey he is pursuing and at a place not designed for the discharge of passengers is held, in *Chicago, R. I. & P. Co.* v. *Sattler* (Neb.) 57 L.R.A. 890, not to be entitled to the protection of a statute making a carrier liable for all personal damage inflicted on a passenger being transported over its road.