

Q. B. Div.]

NOTES OF CANADIAN CASES

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while train moving slowly and wife sprang after him and was injured. Left to jury to say whether she had acted imprudently in so doing. They found verdict for plaintiffs.

Held, that question of contributory negligence was properly left to them and court refused to disturb the verdict.

BUTTERFIELD V. WELLS.

Solicitor and client—Retainer by assignee under Insolvent Act of 1875—Liability of assignee for costs.

The defendant's testator was a sheriff and official assignee under Insolvent Act of 1875. The plaintiff was solicitor for the City Bank, and also for one Boupon, whose petition, G. F., was placed in insolvency. The official assignee became creditors' assignee. At first meeting of creditors, B. being chairman, the plaintiff representing the City Bank, whose claim amounted to nearly the whole indebtedness, moved a resolution whereby it was resolved to sell certain goods of the insolvent, that the assignee should take the necessary proceedings to realize the object and recover certain property alleged to belong to the insolvent, and for that purpose to retain counsel if necessary. W. became inspector of the estate and consulted with the plaintiff, and on his advice instructed the assignee to defend and bring actions. The assignee was obliged to pay costs and damages in action brought against him to recover goods wrongfully taken by him, and he also paid the plaintiff some costs, whereby the assets of the estate were exhausted, and a small sum in addition paid by the assignee out of his own funds. The defendant's testator was subsequently removed from office of assignee and a new assignee appointed, wherefore he presented a petition to the Insolvent Court, in which he alleged that he had retained the plaintiff and had been put to great expense in bringing and defending suits as assignee, and had become liable to pay large sums of money in respect thereof, and prayed payment by the new assignee, which was refused. The plaintiff delivered his bills to the defendant's testator in his lifetime; after death of testator, plaintiff wrote a letter to one of his sons about the costs, in which in relating the facts, he stated that he was attorney for the bank. The plaintiff now sued the personal representative for his unpaid

costs of the proceedings carried on by him. Senkler, Co. J., who tried the case, found that the retainer was not a personal one by the assignee, but that the plaintiff had acted for the benefit of the creditors and was in fact their solicitor.

Held, ARMOUR, J., dissenting, (affirming the judgment of Senkler, Co. J.) it was a question to be determined on the evidence, whether the retainer was a personal one by the assignee, or whether he was acting merely on the instructions of creditors; that upon the evidence the plaintiff was solicitor for the creditors and not for the assignee personally, and notwithstanding the admission contained in the assignee's petition, he had not incurred any personal liability for the costs.

Per ARMOUR, J.—The presumption is that when a solicitor is retained, the person retaining him is liable for his costs, and to avoid liability he must shew some special agreement to the contrary. The evidence here not only did not displace the presumption, but shewed that the testator had always considered himself liable for the costs.

Per HAGARTY, C. J.—It is the duty of a solicitor to inform his client as to the advisability of taking proceedings and incurring costs, when it may become a question whether the costs will have to be paid out of his private funds or out of a trust fund or estate.

REGINA V. WALLACE.

Canada Temperance Act of 1878—Conviction—Certiorari—Prior conviction.

Held, CAMERON, J., dissenting, that section 111 of Can. Tem. Act '78 takes away the right to certiorari in all cases except cases of want or excess of jurisdiction, and that it applies to conviction for all offences against the preceding sections of Pt. II of the Act and does not relate to merely offences against sec. 110.

Per HAGARTY, C. J., and ARMOUR, J.—An erroneous finding on the evidence by the magistrate is not such a want of jurisdiction as warrants the issue of a certiorari.

Per CAMERON, J.—There was no evidence of the commission of the offence charged in this case and therefore the magistrate acted without jurisdiction, and a certiorari would lie.