

was not shewn. On the body of the deceased there was found a pass or "pass," which was not produced, and there was no evidence to shew any conditions in it, nor over what portion of the company's lines, nor for what purposes it was to be honoured. On the close of the plaintiff's case the defendants adduced no evidence whatever, and the jury found that the company was at fault, owing to a defective system of operation of their trains, and assessed damages, at common law, for which judgment was entered for the plaintiff.

Held, that there was a presumption that deceased was lawfully on the passenger car and, in the exercise of their business as common carriers of passengers, the company were, therefore, obliged to use a high degree of care in order to avoid injury being caused to him through negligence; that there was nothing in the evidence to shew that deceased occupied the position of a fellow-servant with the employees engaged in the operation of the trains which were in collision; and that, in the absence of evidence shewing any agreement express or implied, or some relationship between the company and deceased which would exclude or limit liability, the plaintiff was entitled to recover damages at common law.

Judgment appealed from (16 B.S. Rep. 113) affirmed. *Nightingale v. Union Colliery Co.*, 35 Can. S.C.R. 65, distinguished.

Ewart, K.C., for appellant. *Chrysler*, K.C., for respondents.

Province of Manitoba.

COURT OF APPEAL.

Full Court.]

[Feb. 12.]

GUNN v. CANADIAN PACIFIC RY. CO.

Negligence—Bailment—License to keep horses in stable for reward—Liability for injury to horse caused by defect in building—Landlord and tenant.

By an arrangement made with defendants the plaintiffs were permitted to use a stable of the defendants to keep and feed their horses in. The defendants supplied the feed and charged 50 cents per head per day for this and the stable accommoda-