The question then arises whether the defendants were guilty of any actionable negligence in not using all reasonable means in order to rescue the drowning man. Undoubtedly such is one's moral duty; but what legal duty did the defendants owe to the deceased to rescue him, if possible, from his position of danger, brought about, not by their, but his own, negligence?

At the conclusion of the argument, counsel were requested to hand in any authorities dealing with this point but failed to do so. After careful search, I can find but one case, Melhado v. Poughkeepsie Transportation Co., 27 Hun (N.Y.) 99, which affirms such a duty. That case does declare that a common carrier was liable for the death of a passenger which was due to failure to stop the boat in order to rescue him after he had fallen overboard.

The plaintiffs' counsel cited Connolly v. Grenier, Q.R. 34 S.C. 405, affirmed in 42 S.C.R. 242, in support of the proposition. In that case the wreck of the vessel, with its attendant loss of life of seamen, was caused by the negligence of those in charge. Where one by negligence puts another in danger, it is manifestly his duty, if possible, to undo such negligence by preventing injury therefrom. But in the present case the deceased's position of danger was caused by his own negligence, and not that of the defendants. And, further, the Civil Code of Quebec applied to Connolly v. Grenier—art. 1054 of which, in the circumstances of that case, made the vessel-owners liable for the negligence of fellow-servants. The doctrine of common employment, however, obtains in Ontario, except when otherwise provided by the Workmen's Compensation for Injuries Act, and the facts of this case do not bring it within any of the exceptions mentioned in that Act; thus Connolly v. Grenier, ante, is not an authority in this case.

It is further argued that the vessel was unseaworthy, in that the electric bell system was out of order, thereby causing a fatal loss of time in attempting the rescue.

The evidence, I think, warrants the finding that the bells were out of order, and that in this respect the vessel was unseaworthy, contrary to the provisions of sec. 342 of the Canada Shipping Act. The evidence also shews that the seamen were never instructed in regard to the use of life buoys, and it may be inferred from Ray Dale's failure to throw the life buoy overboard at once that he was an incompetent and inefficient seaman, and that such inefficiency also constituted unseaworthiness. It is not the case of negligence by a competent seaman, in which case the doctrine of common employment would apply, and the owner of the ship