

under the Real Property Act, he made a subsequent sale of the same property to the defendant Bailey who paid the purchase money, registered his transfer and obtained a certificate of title. The plaintiff's purchase money was not paid over and he had neglected to register his transfer, but relied on the fact that his solicitor had told Bailey of the prior sale before he purchased. The latter, however, was afterwards informed by one Watson, a real estate agent, that the property had not been sold but had been placed by James in his hands, for sale. James himself also told Bailey that he had not sold the property and Bailey's solicitor made due search at the Land Titles Office and found that the property still stood in the name of James.

*Held*, that, under ss. 71, 91 of R.S.M. 1902, c. 148, Bailey's title could only be impeached for fraud, and that the circumstances did not shew fraud on Bailey's part. In order to bring abstinence from inquiry within the category of actual notice there must be wilful abstinence from inquiry and a fraudulent determination not to be informed: *Stark v. Stephenson*, 7 M.R. 381. Specific performance refused with costs.

*Robson and Taylor*, for plaintiff. *Anderson and Garland*, for defendants.

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Dubuc, C.J.]

[June 12.

PEDLAR v. CANADIAN NORTHERN RY. CO.

*Railways—Negligence—Failure to ring bell on approaching highway crossing—Contributory negligence.*

The plaintiff's team of horses and waggon were struck by an engine of defendants on a highway crossing in the City of Winnipeg. The horses were killed and the waggon and harness damaged. The evidence was conflicting as to whether the whistle had been blown on approaching the crossing, but it was clear that the bell had not been sounded as required by s. 224 of the Railway Act, 1903. There was, however, some evidence to shew that the driver of the team could easily have seen the engine approaching, if he had looked. The learned judge inclined to the belief that the driver had been negligent in that respect, and that the plaintiffs could not recover because of such contributory negligence: *Winkler v. G.W.R.*, 18 U.C.C.P. 250; *Johnston v. Northern Ry. Co.*, 34 U.C.R. 432, and *Weir v. C.P.R.*, 16 A.R. 100.