Commissioners, 3 Ct. of Sess., 4th series, 542; and concluded:—

In the present case, I think it cannot be doubted that defendant had control over Mullen while he was running a free omnibus for defendant's hotel, and the accident having occurred during this time, defendant, in my judgment, is liable, and the appeal should be dismissed with costs.

DECEMBER 7TH, 1906.

DIVISIONAL COURT.

GUNN v. TURNER.

Vendor and Purchaser—Contract for Sale of Land—Specific Performance—Title—Recital in Deed more than Twenty Years old—Evidence—Onus.

Appeal by plaintiff from judgment of TEETZEL, J., dated 12th October, 1906, dismissing an action for specific performance. On 9th April, 1906, the defendant contracted to sell to the plaintiff certain lots on the north side of Dupont street in the city of Toronto for $10,000 cash. Defendant alleged that plaintiff refused to accept the title to the land, and neglected to carry out the contract by the time given him, and that therefore the contract was at an end.

H. S. Osler, K.C., for plaintiff.

C. H. Ritchie, K.C., for defendant.

The judgment of the Court (BOYD, C., MAGEE, J., MABEE, J.), was delivered by

BOYD, C.:—By the provision of R. S. O. 1897 ch. 134, sec. 2 (1), recitals in deeds 20 years old shall be taken to be sufficient evidence of the truth of the matter therein, unless and except in so far as they are proved to be incorrect, and sec. 3 extends the rule to actions, and provides that the evidence of the recital which is declared to be sufficient as between vendor and purchaser shall be prima facie sufficient for the purposes of the action. There was no evidence here