

persons should not be allowed to come on board ; or if permitted in the cars, they should be so guarded as to prevent their injuring other passengers. The court held that the position of the tavern-keeper, who furnishes the liquor to make men drunk and then harbours them about his premises, could not be any better than that of the railway company.

This is said to be the first decision in which the responsibility of an inn-keeper has been held to extend to the acts of violence of his guests, while on his premises and under the influence of his wares.

VOLENTI NON FIT INJURIA.—We learn from the English *Law Journal* that at the Marylebone County Court, before his Honor Judge Stonor, judgment was delivered in the case of *Down v. Holland & Son*, as follows : " The plaintiff is a workman, who, on Wednesday, September 28, came in the morning to work at the Portman Rooms, which were being decorated, at day work. He proceeded to work upon a square scaffolding, erected in the hall, on the cross-bars of which there were three projecting boards, two of fourteen feet and one of twelve, and to the latter another short board had been nailed to lengthen it. A loose board was then put across the projection of all three boards, and upon this cross-board the plaintiff stood to strip the paper from the wall. Whilst he was so doing the nails by which the short additional board had been fastened to the twelve-foot board were forced upwards by the plaintiff's weight on the cross-board, the additional board gave way, and the cross-board fell with the plaintiff to the ground. The plaintiff suffered a severe injury to his ankle, which has incapacitated him from work ever since, and there seems no certainty of his ever being able to work as before. The plaintiff had complained to the foreman and also to his fellow-workmen of the unsafe condition of the scaffold, and the foreman had replied that 'he had no other boards' to remedy it. The defence to the action is *Volenti non fit injuria*. The first question is, whether this plea, if sustained by evidence, is a defence to an action under the Employers' Liability Act, like the present, where the plaintiff had given notice to the defendant, or his foreman, of the defect in question ; and the second is, whether the plea is sustained by the evidence in the present action. In *Yarmouth v. France*, 19 Q. B. D. 647, a Divisional Court (*dissentiente* Lopes, L.J.) held that the plaintiff's consent to continue in a certain employment, with full knowledge of the risk to be thereby incurred, was not sufficient to entitle the defendant to the benefit of the rule *Volenti non fit injuria*, unless it was also proved that such risk was incurred voluntarily by the plaintiff ; and the subsequent cases of *Membury v. The Great Western Railway Company* and *Thursell v. Handyside & Co.*, 4 Times L. Rep. pp. 265, 266, are decisions of two other Divisional Courts in accordance with the case of *Yarmouth v. France*. In all these cases the court appears to have held that the notice and complaint to an employer or his foreman, and to fellow-workmen, were in themselves sufficient evidence of the plaintiff's unwillingness to run the risk, notwithstanding his willingness to do the act, in question, and to have regarded the excuse of 'my poverty, and not my will, consents,' as suffi-