and judgment entered thereon was affirmed, on appeal, by the Supreme Court, and from the latter judgment the defendant has appealed to this court.

Aaron J. Vanderpoel for appellant.

George G. Reynolds for respondent.

Grover, J.—The important question in this cases arises upon the exception taken by the defendants' counsel to the denial of his motion for a nonsuit, made upon the ground that the negligence of the plaintiff's intestate contributed to the injury that caused his death. The evidence showed that the train was approaching in plain view of the deceased, and had he for his own purposes attempted to cross the track, or with a view to save property placed himself voluntarily in a position where he might have received an injury from a collision with the train, his conduct would have been grossly negligent, and no recovery could have been had for such injury. But the evidence further showed that there was a small child upon the track, who, if not rescued, must have been inevitably crushed by the rapidly approaching train. This the deceased saw, and he owed a duty of important obligation to this child to rescue it from its extreme peril, if he could do so without incurring great danger to himself. Negligence implies some act of commission or omission wrongful in itself. Under the circumstances in which the deceased was placed, it was not wrongful in him to make every effort in his power to rescue the child, compatible with a reasonable regard for his own safety. It was his duty to exercise his judgment as to whether he could probably save the child without serious injury to himself. If, from the appearances, he believed that he could, it was not negligence to make an attempt so to do, although believing that possibly he might fall and receive an injury himself. He had no time for deliberation. He must act instantly, if at all, as a moment's delay would have been fatal to the child. The law has so high a regard for human life that it will not impute negligence to an effort to preserve it, unless made under such circumstances as to constitute rashness in the judgment of prudent persons. For a person engaged in his ordinary affairs, or in the mere protection of property, knowingly and voluntarily to place himself in a position where he is liable to receive a serious injury, is negligence, which will preclude a recovery for an injury so received; but when the exposure is for the purpose of saving life, it is not wrongful, and therefore not negligent unless such as to be regarded either rash or reckless. The jury were warranted in finding the deceased free from negligence under the rule as above stated. The motion for a nonsuit was, therefore properly denied. That the jury was warranted in finding the defendant guilty of negligence in running the train in the manner it was running, requires no discussion. None of the exceptions taken to the charge as given, or to the refusals to charge as requested, affect the right of recovery. Upon the principle above stated, the judgment appealed from must be affirmed with costs.

Church, C. J., Peckham and Rapallo, JJ., concurred.

CORRESPONDENCE.

Some recent Division Court Decisions.

To the Editors of the Law Journal.

Gentlemen,—The following cases were decided before Judge Dennistoun in the Division Court at Peterboro':

Defendant had been tenant to plaintiff under a lease under seal. One of his covenants was "to pay, satisfy and discharge all rates, taxes and assessments which shall or may be levied, rated or assessed in or upon the said demised premises during the said demised term." The tenancy commenced on the 20th February, before assessment made, and was to continue for five years. Before the expiry of the term, defendant, becoming embarrassed, requested plaintiff to take the premises off his hands, which he did on the 25th July, after the assessment had been made, taking from defendant a reconveyance under seal, which reconveyance contained this proviso—"Reserving always to plaintiff all his rights and remedies under the said lease and the covenants thereof."

Subsequently to this, plaintiff sued defendant for an account, including a balance of this rent, to which defendant made a set-off of so much of the taxes for that year as accrued after the reconveyance aforesaid, which set-off the learned Judge allowed, holding that as the proviso in the reconveyance did not express the word "taxes," plaintiff could not recover. It will be noted that the proviso expressly reserved to plaintiff all defendant's covenants in the lease, *one of which was to pay these taxes.*

Plaintiff sued defendant for rent due under a lease under seal. Defendant was called to prove the execution of the lease. While plaintiff's examination of defendant was going on, the learned Judge told defendant that he might or might not answer plaintiff's questions, as he pleased. After plaintiff's examination had closed, which was confined to the proving the execution of the lease, defendant volunteered evidence on his own behalf to the effect that the rent ought to be less than that stated in the lease. In vain plaintiff argued that such evidence was not admissible; that defendant could not thus, by his own *parol* evidence, impeach his own solemn deed. Nevertheless the learned Judge held otherwise, and made the reduction accordingly.