

such facts and circumstances did not exist as are necessary to constitute reasonable and probable cause for the prosecution.

*Moss, Q.C., for the motion.*

*W. Nesbitt, contra.*

Full Court.] Dec. 14, 1888.

HUTCHISON v. CANADA PACIFIC RAILWAY.

*Railways -- Negligence -- Contributing Negligence -- Travelling by freight train.*

The plaintiff was going from Ingersoll to Montreal by train in charge of cattle. At Toronto the train on which he had come from Ingersoll was partly broken up, to be re-made with some cars which were standing on another track at Toronto. While at the station at Toronto, plaintiff went into the caboose at the end of the cars which were to be added to the portion of the train which had come from Ingersoll, and though the plaintiff knew there would be a shock when the connection was made between these two parts of the intended train, he stood up in the caboose, and was washing his hands when the connection was made, and the resulting shock caused the injury. The evidence did not show that the defendants knew he was in the caboose at all, nor did the plaintiff prove negligence in any other way than as above.

*Held*, affirming the decision of Rose, J., that the mere fact of the accident happening to him was not in itself sufficient evidence of negligence, and the action must be dismissed.

*Held*, also, that there was evidence of contributory negligence in that the plaintiff knew he was in a freight train, where there would not be so much care shown, and yet stood up, instead of setting down as he might have done, while the connection was being made.

*W. Nesbitt, for plaintiff.*

*Aylesworth, for the defendants.*

Full Court.] [Dec. 22, 1888.

YOUNG v. SPIERS.

*Assignment for creditors -- Filing of claim -- Right to rank -- Collateral securities.*

Wardlaw made an assignment to trustees for the benefit of his creditors prior to 1884. In July, 1884, Harvey filed a claim against the estate, claiming (1) upon two mortgages

on land; (2) upon an open account and certain notes made by Wardlaw; (3) upon certain notes made by Turnbull in favor of Wardlaw, and endorsed over by Wardlaw to him, which were made by Turnbull for Wardlaw's accommodation, and were delivered to Harvey as a general collateral security for Wardlaw's indebtedness to Harvey. Since filing the claim the mortgage debts had been paid to Harvey, who had thereupon assigned the mortgages, and the Turnbull notes had been paid by Turnbull to Harvey, and Turnbull had thereupon filed a claim in respect to them against Wardlaw's estate. The mortgages had been given to secure payment of entirely separate and isolated debts from Wardlaw to Harvey. Harvey afterwards made an assignment to trustees for his creditors, and these latter now brought this action, claiming that notwithstanding all the above circumstances they were still entitled to rank on and receive a dividend from the Wardlaw estate on the whole of the above indebtedness, and on Harvey's claim as originally filed.

*Held*, that as to the mortgage debts they were not entitled to receive a dividend, these being separate and distinct debts, but that as to the Turnbull notes they were still entitled to rank, on the authority of *Eastman v. Bank of Montreal*, 10 O.R. 79, provided that they did not in all receive more than 100 cents on the dollar; and this did not prevent Turnbull also ranking in respect to the sum he had paid as accommodation maker.

*Crevar, for the plaintiffs.*

*Creelman, for the defendants.*

Boyd, C.]

[Jan. 9, 1889.

THE CORPORATION OF THE VILLAGE OF EAST TORONTO, *et al.*, v. THE CORPORATION OF THE TOWNSHIP OF YORK.

*Erection of new municipality -- Division of assets -- School fund.*

On the erection of two village municipalities out of a township,

*Held*, that the moneys derived from "The Ontario Municipalities Fund," which had some years before been by by-law appropriated to the school purposes of the township,