tion of an agreement made between one Marshall with Maclure & Co., whereby Marshall agreed to surrender to Maclure & Co. "his share" in a certain mortgage held by him as trustee for the firm of which he was a member and certain other persons—having regard to the surrounding circumstances—passed the share of Marshall's firm, and not merely his own individual share as between himself and his partner.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

QUEEN'S BENCH DIVISION.

BECKET v. GRAND TRUNK RAILWAY CO.

Prosecution—Railway Co.—Track not fenced—Unlawful rate of speed—Accident—Contributory negligence—Common law liability—Life policy—Deduction from damages.

The plaintiff's husband was driving in his waggon along the highway in the town of Strathroy, where it crossed the defendants' line of railway which was then unfenced. As he approached the track he did not observe any stir among the railway employés or others there, or any other signs indicating the approach of an expected or coming train. There was a curve in the line about a mile to the west beyond which a train could not be seen; there was strong evidence that the view which he might have had for some distance westward was obstructed partly by cars placed by the railway employés on the side tracks, and partly by a baggage house and other obstructions, so that he could not see far enough to enable him to avoid a train running at the rate of thirty-five miles an hour, as the defendants' train was at—the train in question was a fast train, but recently established—when there was no direct evidence that he had ever seen passing through the town or that he knew of it. There was apparently credible evidence that after the locomotive came within hearing distance there was no sound of bell or whistle until it was so near the crossing that there was only time for two short, sharp whistles, when the collision with the waggon took place, which caused the death of the plaintiff's husband and the destruction of both horses and waggon. The alleged obstructions and the neglect to ring the bell or sound the whistle were strongly controverted by defendants' witnesses, though the evidence for the defence rather corroborated the plaintiff's witnesses in those respects.

Held, that it was altogether a case for the jury, and as it was fairly presented to them upon questions fairly put to them, which they had answered, finding in the plaintiff's favour, the Court would not interfere with their finding.

Held, also, that there was no contributory negligence on the part of the deceased.

Per O'CONNOR, J.—That the defendants, under the circumstances appearing in this case, were not only liable in damages but to a criminal prosecution as well.

Per WILSON, C.J.—That independent of any statutory enactment on the subject, the defendants were running their train too rapidly for the public safety at the place in question; and they must be governed by the same rules which govern ordinary vehicles and trains using roads which meet and cross each other, each while providing for its own safety also providing for that of others, and each having the same rights and privileges, but no higher than the other.

Held, also, WILSON, C.J., dissenting, that a policy of insurance on the life of the deceased for $3,000 had been improperly directed by the learned judge to be deducted from the damages assessed by the jury.

Per WILSON, C.J.—That the whole amount of such policy should be deducted, but in any event such deduction should be made as would represent the probable premium payable had the deceased lived, as also the interest upon such premium.