

STREET RAILWAYS—BURIAL GROUNDS, WHEN A NUISANCE.

STREET RAILWAYS.

While rival street railway companies are invoking the aid of motions, affidavits, injunctions, and the choicest weapons of the legal armory in general, to assist them in their beneficent mission, it may not be amiss to call attention to the recent American case of *Walling v. Germantown Passenger Railway Co.*, which sets in a strong light the almost forgotten, or we should rather say, neglected principle, that such companies owe certain duties to the public as well as to themselves. The action was brought for the death of Bernard Walling, through the alleged negligence of the defendant company. Over four years ago the deceased, who was standing on the front platform of a crowded street-car, and only able to keep his place thereon by holding with one hand to the iron of the dasher, and with the other to an iron bar under one of the windows, was forced from his hold by several passengers being thrown against him while the car was rounding a corner, the result being that he was run over and killed. From a judgment in favor of plaintiff in the court below, the defendants took a writ of error. The judgment of the court below has, however, been sustained, and the doctrine re-affirmed that "riding on the front platform of a street-car which is crowded is not contributory negligence *per se*, precluding a recovery for the death of a passenger occurring while so riding." We may remind our readers of the somewhat analogous case in our own Courts of *Cornish v. The Toronto Street R. Co.*, 23 C. P. 355, where it was held that the fact of the plaintiff not proving affirmatively that he was holding on to the iron rail of the front platform of a crowded car, at the time when he was thrown off by a jolt and injured, was not a ground for non-suit.

The judgment of the Pennsylvania Supreme Court is given *in extenso* in the *Albany Law Journal* (Vol. 23, p. 371), and will be found very interesting and conclusive. We quote

two or three sentences, the truth and appropriateness of which will commend themselves to every Torontonion at least.

"Conductor, driver, and passengers acted as if there was room, so long as a man could find a rest for his feet and a place to hold on with his hands. Nor was that action exceptional. Notoriously it was very common in 1876, and perhaps it is not infrequent at this day. The companies do not consider such practice dangerous, for they knowingly suffer it and are parties to it. Their cars stop for passengers when none but experienced conductors could see a footing inside or out. The risk in travelling at the rate of six miles an hour is not that when the rate is sixty or even thirty. An act which would strike all minds as gross carelessness in a passenger on a train drawn by steam-power, might be prudent if done on a horse-car. Rules prescribed for observance of passengers on steam railroads, which run their trains at great speed, are very different from those on street railways. In absence of express rules every passenger knows that what might be consistent with safety on one would be extremely hazardous on the other.

"Street railway companies have all along considered their platforms a place of safety, and so have the public. Shall the court say that riding on a platform is so dangerous that one who pays for his standing there can recover nothing for an injury arising from the company's default?"

BURIAL GROUNDS—WHEN A NUISANCE.

We recently referred (*ante*, p. 184) to two peculiar cases decided in the United States Courts, bearing upon the rights of husbands and wives to choose the last resting place of their deceased partners in life. The minds of our readers will therefore be prepared for another case presenting a somewhat different aspect of this grave subject. It has been decided by the Maine Supreme Judicial Court in the case of *Monk v. Packard* that a burial ground