her business affairs, and he proceeded to invest the plaintiff's moneys upon mortgages. In 1878 he took the defendant W. into partnership with him, and the business of the plaintiff continued to be managed by him, but all entries were made in the books of the firm, and all legal charges went into the profits of the firm. Losses occurred in connection with these investments.

Held, BURTON, J.A., dissenting, affirming the decision of the Divisional Court of the Queen's Bench Division (15 O.R. 662), that W. was liable. When the partnership was formed, W., in order to escape liability, should have given warning to the plaintiff that he did not intend to accept liability.

In 1883, R. entered into an agreement with the plaintiff to purchase for her certain lands in Dakota, R. being entitled to a certain share of the profits of the speculation. The moneys were lost.

Held, reversing the decision of the Divisional Court of the Queen's Bench Division, that the transaction was not entered into by R. as a collector, and that W. was not liable for the loss.

Moss, Q.C., for the appellant W.

Osler, Q.C., *Douglas*, Q.C., and *Aylesworth Finlay*, for the respondent T.

M. Wilson, for the respondents, the trustees of R.

POTTS v. BOIVINE.

Will—Cujus est solum ejus est usque ad coelum.

A testatrix, being the owner of certain lands and premises in the City of Belleville upon which a block of buildings were erected, devised the property in two parcels. The description of one parcel included an archway running through the centre of the block, but the rooms built over this archway were used with the premises devised as the other parcel.

Held, affirming the decision of the Divisional Court of the Common Pleas Division (16 O.R. 152), that the presumption *cujus est solum ejus est usque ad coelum* is a rebuttable one, and that, under the circumstances, the rooms in question did not pass with the land.

Dickson, Q.C., and *Burdett*, for the appellant.

Northrup, for the respondent.

ROWLANDS v. THE CANADA SOUTHERN RAILWAY COMPANY.

Negligence — Railways — Workmen's Compensation for Injury Act—R.S.O., c. 141.

An engine driver is a person who has charge or control of a locomotive or engine within the meaning of R.S.O., c. 141, s. 3, s.s. 5, and the plaintiff, a brakesman, who was injured in consequence of the cars being brought together without any warning signal from the engine, was held entitled to recover.

A. J. Cattanach, for the appellants.

R. M. Meredith, for the respondent.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

Div'l Ct.] [Feb. 4.

CURRY v. CANADIAN PACIFIC RY. CO.

Railway Company—Negligence—Invitation to passenger to board moving train — Patent danger—Question for jury—New trial.

The plaintiff, who was a passenger on a train of the defendants, alighted at a station, and the train having started before he had re-entered it, endeavored to jump on while it was in motion. In doing so he was injured, and brought this action for damages for negligence. There was evidence of an invitation by the conductor of the train to jump on while it was in motion, and the jury found (1) that there was such invitation; they also found (2) that the plaintiff used a reasonable degree of care in endeavoring to get on; and (3) that he was injured while trying to get on, in pursuance of the request of the conductor.

It was argued by the defendants that the danger to the plaintiff was so patent and obvious that he had no right to act on the conductor's invitation or to attempt to get on the train.

Held, that this was a matter which should have been submitted to the jury, and that it was not covered by the second finding; that the questions involved in the action could not be determined upon the findings, and that there should be a new trial.