The amount of damages allowed by the jury to the plaintiff because of his removal from the train while taking one of the longer routes was reduced by this court as unwarrantably large.

Judgment of the Queen's Bench Division, 20 O.R. 603, varied.

Aylesworth, Q.C., for the appellants.

Lount, Q.C., for the respondent.

MEWBURN *v.* MACKELCAN.

Principal and surety—Bond—Payment — Condition precedent—Penalty.

Under a bond conditioned to be void if the person on whose behalf it is given "shall indemnify and save harmless (the obligee) from payment of all liability of every nature and kind whatsoever," a right of action against the sureties arises in favour of the obligee as soon as judgment is recovered against him on a claim coming within the security. Payment of such claim by him is not a condition precedent.

Boyd v. *Robinson*, 20 O.R. 404, confirmed.

A bond without a penalty may be good as a covenant or agreement.

Judgment of ARMOUR, C.J., affirmed.

Robinson, Q.C., *Mackelcan*, Q.C., and *Marsh*, Q.C., for the appellants.

Lynch-Staunton and *Ambrose* for the respondent.

ZIMMER *v.* GRAND TRUNK R. W. CO.

Railway—Damages—Limitations—51 Vict., c. 29, s. 287 (D.)—R.S.O., c. 135, s. 5.

The plaintiff's father was killed on the 10th of February, 1891, by a fall from a bridge which crossed the defendants' line, and had been negligently allowed by them to be out of repair. The action was begun on the 10th of December, 1891, no letters of administration having been taken out.

Held, per BURTON, OSLER, and MACLENNAN, JJ.A. (HAGARTY, C.J.O., expressing no opinion), that this was not "damage sustained by reason of the railway," and that the limitation clauses of the Railway Act did not apply.

Held, also, *per* HAGARTY, C.J.O., BURTON, and MACLENNAN, JJ.A. (OSLER, J.A., expressing no opinion), that the provisions of R.S.O., c. 135 (Lord Campbell's Act), are not affected by special railway legislation of this kind, and that the action was begun in time.

Judgment of ROBERTSON, J., 21 O.R. 628, affirmed on other grounds.

McCarthy, Q.C., and *W. Nesbitt* for the appellants.

Rowe for the respondents.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.] [Nov. 21.

IN RE FORBES *v.* MICHIGAN CENTRAL R.W. CO.

IN RE MURPHY *v.* MICHIGAN CENTRAL R.W. CO.

Prohibition—Division Court—Judge reserving judgment without naming day—R.S.O., c. 51, s. 144—Failure to notify parties of judgment—Prejudice—Claim.

The county judge presiding in a Division Court heard two plaints, and in the presence of the agents for the parties, who made no objection, stated his intention of postponing judgment, but did not name a subsequent day and hour for the delivery thereof, as required by R.S.O., c. 51, s. 144. A month later the judge, without any previous announcement, gave judgment in writing in favour of the plaintiffs, handing it to the agent of the plaintiffs, who delivered it to the clerk of the Division Court. The defendants were not notified by the clerk that judgment had been given till seven weeks later, and till then neither they nor their agent had any knowledge of the judgment. It was then too late to move for a new trial.

Held, that it was the duty of the judge, before he gave judgment, to cause the parties to be notified that he would give judgment at a certain time; that not having done so he was acting without jurisdiction; that the defendants had been prejudiced by the course taken, and had not waived the objection, and were therefore entitled to an order of prohibition.

H. W. Mickle for the plaintiffs.

H. Symons for the defendants.
