NOTES OF CANADIAN CASES.

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COURT OF APPEAL.

BENNETT v. GRAND TRUNK RAILWAY CO.

Trespass—Contributory negligence.

The servant of the plaintiff was in charge of an omnibus running to and from the station of the defendants' railway, and on the evening in question was attending at Georgetown station, at a distance of about nine feet five inches from the track, but was unable to see along the railway in either direction by reason of houses intervening. By leaving the omnibus, however, and going to the track he could have seen an approaching train; but omitting to take this precaution, although aware that a train was then due, he started off to cross the track, and did not hear or see anything of the approaching train until it was within about four feet of him, when he was unable to avoid the train, and the bus and harness of the horses were considerably damaged. It was not shown that the driver of the train had given any warning of the approach of it by sounding the whistle or bell on its nearing that part of the track where it crossed the road to the station. At the trial of an action brought to recover the amount of the damage done the omnibus and harness, the Judge of the County Court (Halton) non-suited the plaintiff, and subsequently, in term, refused to set the non-suit aside, considering that the negligence of the plaintiff's servant was the proximate cause of the accident.

Held, on appeal, [in this reversing the Court below] that the question of negligence on the part of the driver of the locomotive had been improperly withdrawn from the jury, and that a new trial must be had in order to submit that question to them.

Schoff, for the appeal.

J. K. Kerr, Q.C., contra.

DAVIS v. AUSTIN.

Tavern keepers—Supplying liquor after notice not to do so—Principal and agent—R.S.O. ch. 181—Assessing damages.

The plaintiff, whose husband was in the habit of drinking intoxicating liquors to excess, gave notice to the defendant, a duly licensed inn keeper, forbidding him to supply liquor to her husband; in consequence of which, it was alleged, defendant forbade his bar-keeper furnishing liquor to the husband; notwithstanding which the bar-keeper did serve plaintiff's husband with liquor in the tavern kept by the defendant.

Held, notwithstanding the alleged forbidding of the bar-keeper to furnish such liquor, the defendant was liable under the statute R.S.O. ch. 181, sect. 90.

On the trial of the action the County Court Judge (Norfolk) ordered judgment to be entered for the defendant on the ground that his bar-keeper had furnished the liquor contrary to the defendant's orders; the Court, on appeal, reversed such finding and directed a reference back to the Judge of the County Court to assess the damages, the Judge having a discretion to assess the same at any sum between $20 and $200, and the Court declined to follow the course adopted in the case of *Denny* v. *The Montreal Telegraph Co.*, 3 Ap. R. 628.

Falconbridge, for appellant.

Osler, Q.C., for respondent.

GRANT v. VAN NORMAN.

Insolvent debtor—Preferential assignment—Pressure.

V., who was a practising attorney and also Clerk of the Peace and County Attorney, having been ordered to pay over certain moneys, or in default be struck off the roll of attorneys, made an asssignment of his emoluments as County Attorney to H. W. and J. to secure the amount which he had been ordered to pay their client, at the same time telling H. W. and J. that he would leave it to them to hand him back such part as they chose on which to live, such an assignment being generally executed at the beginning of each quarter, upon which they drew the amount coming from the County and handed V. back a portion to live on. Subsequently V. recovered a judgment in favour of a client on which costs were taxed in his favour at $164, which he also assigned to secure an accommodation indorser. About a month afterwards the plaintiff G., as an execution creditor, obtained an attaching order.

Held, [affirming the judgment of SENKLER, J.]