

neighbour knew the plaintiff as a man often about county courts, and asked him if he knew a lawyer who could be brought immediately to the dying man to make a deed of gift for a trifling sum. The plaintiff introduced some person not to the profession, who drew a deed of gift, which was only just executed when the man died. The plaintiff charged £2 for what he and his friend had done, and the present action was to recover £1 of that money still alleged to be due. It came out in evidence that the deed was so unsatisfactorily drawn that neither head nor tail could be made of it. Three counsel had been consulted, two of whom gave opinions in favour of the validity of the deed, and the third against it. Already the precious document had caused expense to the defendants to the amount of nearly £40, and was likely to cost still more. The judgment was, of course, for the defendants with costs, on the ground of the incompetence of the plaintiff and his friend to do what they had undertaken.—*Solicitors' Journal*.

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

RAILWAYS AND RAILWAY COS.—ACCIDENT—
NEGLECT—EVIDENCE.—The plaintiff sued as administrator of his wife, charging in his declaration that by and through the carelessness and negligence of defendants, and for want of sufficient fences, &c., the locomotive and train of defendants were driven against a carriage in which plaintiff's wife was driving along the highway, from the effects of which collision she died.

It appeared that plaintiff with his wife and child and a couple of others, was returning from a picnic party, in a cab, along the highway, which at a certain place crossed defendants' line of railway. This crossing was not fenced, as required by law, and at the same time in question a very long excursion train, no mention of which was contained in the Company's time-tables, was approaching at a rapid rate and came in collision with the cab, injuring plaintiff, his wife and child and ultimately causing the death of his wife. The evidence shewed that the cab was being driven at a slow pace and up an inclined plane towards the railway track, which was considerably elevated above the highway: that though there were some slight obstructions in the way, the train could be seen for some five hundred yards from the crossing, but that neither the driver nor any of the party was looking out for the approach of trains, and in fact that the former did not see the train in question until his horses feet were upon the track, when it was only some seventy yards distant from him; whereas a witness, who was one of plaintiff's

party, stated that had he (cabman) been on the alert, they would all have been saved. It was further shewn that the driver knew the locality, having in fact driven plaintiff and party over it on their way to the picnic, and the preponderance of evidence was to the effect that the railway whistle was heard at a distance of three or four hundred yards from the crossing. The jury having on this evidence found for the plaintiff,

Held, that he was not entitled to recover; for though the not fencing of the crossing by defendants was negligence on their part and a disregard in that respect of their statutory duty, still it did not constitute such negligence *per se* that plaintiff must recover against them, however culpable he may himself have been, and though such want of fencing was not the cause or occasion of the accident: that to justify a recovery for such a cause, it must appear that the damage to plaintiff resulted from the omission to fence as the proximate, if not the direct, cause of the accident, which the evidence did not warrant in this case, but rather that such damage arose from his own gross negligence, or that of his driver, in not keeping a proper look-out for the train, which, with this precaution, it clearly appeared, could easily have been avoided.

In an action by plaintiff against the same defendants, in his own individual right, for injury sustained from the same accident, the Judge at the trial at first directed the jury that, assuming defendants to have been guilty of neglect in not fencing, they must determine whether plaintiff did or did not so far contribute to the accident by his own negligence or want of ordinary care and caution, that but for such negligence or want of care, the accident would not have happened:

Held, that this direction was right. But afterwards, at the request of plaintiff's counsel, who did not wish the question of contributory negligence to be left to the jury, the Judge, as he took the same view, did not charge them to find specially on the question of negligence generally, as applicable to the state of the road, when defendant's counsel objected; so that in the confusion which arose the question of community of default being understood to be withdrawn from the jury, they were led to believe that because defendants were in default, plaintiff must recover: on this ground therefore, the Court, Richards, C. J., *dissentiente*, granted a new trial without costs.—*Winckler (Administrator) v. The Great Western Railway*, C. P. H. T. 31 Vic., 250.

**SALE OF GOODS BY SHERIFF—STATUTE OF
FRAUDS—MEMORANDUM IN WRITING—DELIVERY.**
—A sale of goods by a Sheriff or his bailiff under execution is within the 17th section of the