

judge and jury, and to attempt in any way to lessen the effect produced on the mind of the jury by the words of the judge. That Mr. Ribton exceeded his privilege must, we fear, be admitted. Indeed his own apology shows that he thought so. Had the mistake been committed by a young and inexperienced advocate, the matter would have scarcely attracted attention. But Mr. Ribton is no novice, and he can hardly avoid the censure that must wait on those whoset a bad example. The Lord Justice acted throughout with characteristic calmness and forbearance, and accepted Mr. Ribton's apology with frankness and generosity. There have been, and are, judges who would have been more prompt to rebuke, and less ready to condone.—*Law Journal*.

NOTES OF CASES.

IN THE ONTARIO COURTS, PUBLISHED
IN ADVANCE, BY ORDER OF THE
LAW SOCIETY.

COURT OF APPEAL.

From Q. B.]

[Feb. 3.]

DENNY v. THE MONTREAL TELEGRAPH
COMPANY.

Trap-door—Negligence—Contributory negligence—Evidence.

The part of the defendants' office devoted to the public was some sixteen and a half feet long, from south to north, the entrance door being at the south, and the width was five feet seven inches. About four feet nine inches from the south, and on the east wall was a desk or counter, for writing messages, seven feet six inches long, and one foot seven inches wide. About five inches north of the counter, and in the centre of the apartment there was a trap-door leading to the cellar about two feet nine inches square. On the west side of the apartment was a partition about six feet high, separating the public office from the operators' apartment, the entrance to which was at the north end of the partition. In this partition there was an opening with a desk in it, where also messages were written and delivered to the operator. D. came in quickly to send a

message, spoke to the operator at this opening, and then went beyond the counter as if to go into the operators' room, when, the trap-door being open, he fell through into the cellar, and received injuries of which he died. There was evidence given to show that deceased said it was his own fault, and that he ought not to have been where he was; that the office was a very light one, and that there was no difficulty in seeing the trap, but it also appeared that other persons on other occasions had nearly fallen into it. The learned Judge who tried the case, without a jury, and viewed the premises, found that the deceased was guilty of contributory negligence, which precluded the plaintiff, his administratrix, from recovering. Held in the Court of Queen's Bench that the defendants were liable; that the evidence of the open trap-door in the part appropriated for the public was negligence for which the defendants were chargeable; that there was no evidence of contributory negligence on the part of the deceased; and that the plaintiff would be entitled to have the verdict entered for him if the damages had been assessed; but this not having been done a new trial was ordered.

Held, in the Court of Appeal, dismissing the appeal, (without deciding whether they would have come to the same conclusion in reversing the decision of the learned Judge who tried the case, as the Court of Queen's Bench,) that sitting as an appellate court, there was no sufficient reason for arriving at a different conclusion; and, that, under the judgment pronounced in the Court below, it would be useless to submit the case to another jury, the Court below should have assessed the damages which they now did.

C. Robinson, Q. C., for the appellant.

S. Richards, Q. C., for the respondent.

Appeal dismissed.

From Chy.]

[Feb. 3.]

NELLES v. PAUL.

Insolvent Act 1875—Payment—Fraudulent preference.

The insolvent paid a note within thirty days of his being placed in insolvency in