

street to get into it. When he started to cross to it, the eastward bound car was coming along at a fast trot, but was some hundred feet away to the west. The plaintiff was somewhat intoxicated. While he had hold of the westward bound car to board it, the eastward bound car ran over his foot, which was on the rail. It was broad daylight.

The jury found a verdict for the defendants.

Held, that there must be a new trial.

Although it might be said that the plaintiff did not, by direct evidence, show any specific act or omission on the part of those in charge of the eastward bound car, on which to rest his action, yet the happening of the accident and the attendant or surrounding circumstances were sufficient to raise the presumption that there was negligence on the part of those in charge of the car, the consequence of which was the happening of the accident. There was reasonable evidence, in the absence of any explanation by the defendants, that the accident arose from want of care on their part. Assuming that the plaintiff was guilty of some negligence himself, the defendants did not prove that his negligence was such that the accident could not have been avoided by due diligence on their part; that is, they did not prove that his negligence was the *proximate* cause of the accident, and therefore did not establish their defence of contributory negligence.

Per ROBERTSON, J.: Another ground for a new trial was the injustice done in this case by counsel for the defendants appealing to the jury on the ground that, as they were ratepayers, they would be giving damages against themselves if they gave the plaintiff a verdict; by which appeal they appear to have been influenced.

McCullough for the plaintiff.

C. R. W. Biggar, Q.C., for the defendants.

Common Pleas Division.

Div'l Court.]

[Feb. 27.]

MCLEAN v. CLARK.

Partnership—Whether party member of firm—Evidence.

C., who had been carrying on a general store and hardware business, in May, 1887, sold out to M. the general business, retaining the hard-

ware portion, taking from M., to secure payment of the purchase money, a chattel mortgage. The business continued to be carried on on the same premises as before, a partition separating the hardware from the general business, but with a door leading from the one to the other, generally kept open. A certificate was registered stating that M. was carrying on the general business alone, under the firm name of C.M. & Co. It was ostensibly carried on under the firm name, which was the name on the sign over the door, and in the bill-heads and advertisements. The plaintiffs, who supplied goods to C. prior to the sale to M., continued to supply goods, which were charged to the firm, no notice being given them that C. was not a member thereof, while the circumstances led to the belief that he was such member.

Held, that C. was liable for the goods so supplied to the firm.

McCarthy, Q.C., for the plaintiff.

Britton, Q.C., for the defendant.

REGINA v. MCGIBBON.

Conviction—Trespass to land—Invalid by-law closing road—Defendant acting under bona fide belief of right—Reviewal of decision of magistrate.

On a motion to quash a conviction for trespass it appeared that in 1834, under the laws then in force, the land in question had been laid out as a road, extending back from the lake shore through a certain lot; that in 1860 the then owner of the lot petitioned the municipal council for leave to close the road by erecting a gate at a named point in the centre of the lot, as otherwise, it alleged, the petitioner would have to erect some two miles of fencing to enclose the lot, and the same day a by-law was read and passed through the three readings without any publication of the notice of the passing of the by-law, as required by s. 308 of the Municipal Act, 22 Vict., c. 99. The by-law also was not merely for the erection of the gate, but, after reciting that the by-law was necessary for the closing up the road leading from the centre of the lot to the lake shore, enacted that the said road was thereby closed. Evidence also was given showing that the complainant, the present owner, had himself got permission to perform his statute labor on the road.