

*Provident Fund Society*, 140 N.Y. App. 23, followed. *Cassel v. Lancashire, etc., Ins. Co.*, 1 T.L.R. 495, distinguished.

2. Per PERLUE and CAMERON, J.J.A.—The tender by the defendants before action of one-tenth of the amount of the policy, followed by a plea of tender and payment of the one-tenth into court, was an admission of liability on the policy and a waiver of the condition as to notice.

The decision of Mathers, C.J., on the question of the intoxication of deceased should not be disturbed.

*Trueman*, for plaintiff. *Fullerton*, for defendants.

Full Court.]

[Sept. 27.]

WOOD v. CANADIAN PACIFIC RY. CO.

*Negligence—Railway company—Workmen's Compensation for Injuries Act, R.S.M. 1902, c. 178—Contributory negligence—Volenti non fit injuria—Evidence to go to the jury—Non-suit—New trial.*

At the trial before a jury of an action by a switchman to recover damages against a railway company for injuries alleged to have been caused to him while engaged in the execution of his duty under the orders of his foreman through negligence in the operation of a train by other servants of the company and because there was not sufficient room between the different tracks in the railway yard to enable the plaintiff to carry on his work safely, the defences of contributory negligence and volenti non fit injuria are properly for the jury and, when there was some evidence that the bell had not been rung or the whistle sounded on the train which struck the plaintiff, and to shew that the "lay-out" of the yard was defective, a verdict entered for the defendants by direction of the trial judge should be set aside and a new trial granted.

*Toronto Railway Co. v. King* (1908) A.C. 260, and *Trigley v. City of Winnipeg*, 20 M.R. 22, followed.

*Macneill*, for plaintiff. *Aikins, K.C.*, and *Curle*, for defendants.

Full Court.]

KERFOOT v. YEO.

[Oct. 4.]

*Vendor and purchaser—Rescission of contract—Cancellation—Right to recover money paid under cancelled agreement.*

Appeal from judgment of MACDONALD, J., noted vol. 45, p. 573, dismissed with costs.