or guard on the east side of the car; that the car was running at too great speed; and that the up and down tracks were too close together. The appellants contended that there was no negligence on their part; that the deceased was guilty of contributory negligence; and that plaintiff had no pecuniary interest in the continuance of the life of the deceased. While this appeal had been pending the action has been tried a second time, and a verdict given for plaintiff for $1,000. The Court held (Osler, J.A., dissenting) that a nonsuit should have been entered at the first trial; that the negligence of the defendants was not the cause of the misfortune, but the deceased's own voluntary act in jumping upon the car, which was clearly shown by the plaintiff's own witnesses. Appeal allowed with costs, and action dismissed with costs. McCarthy, Q.C., Laidlaw, Q.C., and J. Bicknell for appellants. J. K. Kerr, Q.C., and C. D. Scott for plaintiff.

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ALDRICH v. CANADA PERMANENT L. AND S. CO.

[BURTON, OSLER, MACLENNAN, JJ.A., FALCONBRIDGE, J., 3RD MARCH, '97.

Mortgagor and mortgagee—Mortgage sale of two properties "en bloc" and not in separate parcels—Loss to mortgagor—Mortgagee liable for "reckless" conduct.

Judgment on appeal by defendants from order of a Divisional Court (Ferguson, J., Robertson, J.), reversing judgment of MacMahon, J., dismissing action with costs. The plaintiff mortgaged to defendants a farm with a brick house on it, and also two stores in the village of Harrow, three-quarters of a mile distant from the farm. The mortgage becoming in arrears, the defendants sold the two properties, en bloc, under the power of sale in their mortgage. The Divisional Court held (27 O. R. 548), that the mortgagees had not acted with that prudence and discretion which they were bound to use, and were liable in damages to the mortgagor for the difference between the price obtained and that which, upon the evidence, would have been obtained had they sold the properties separately, viz., $1,300. The Court (Burton, J.A., dissenting), dismissed the appeal with costs, agreeing with the Court below, and expressed the opinion that the defendants' conduct might be aptly described as "reckless." They referred to the recent case of *Kennedy* v. *De Trafford* (1896), 1 Chy. 762. W. Cassels, Q.C., and G. A. Mackenzie for appellants. C. Macdonald for plaintiff.

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Divisional Court.

STRUTHERS v. MACKENZIE.

[ARMOUR, C.J., FALCONBRIDGE, J., AND STREET, J., 9TH MARCH, 1897.

Co-operative association—R. S. O. c. 166—Purchase on credit—Action against individual members — Difference between implied representation in law to do an act and an implied representation of authority in fact to do it.

Judgment on appeal by plaintiffs from judgment of Royd, C., at the trial, dismissing the action, which was brought by the creditors of the Wyoming Co-operative Association, Limited, against the individual members of the association, to recover the price of goods sold to the association on credit. The association was incorporated under R. S. O. c. 166, by s. 13 of which it is provided that the business of such association shall be a cash business, and no credit shall be