sued the Grand Trunk Company for having demolished an omnibus which was being driven across the rails. He alleged that the train came at unusual speed, without ringing a bell, or whistling, and knocked over his omnibus. The company pleaded that they were ringing the bell; that it was not incumbent on them to sound a whistle, and that the plaintiff might have avoided the accident, if he had been careful. A number of witnesses were examined on each side, and Judge Mondelet, who rendered the judgment, decided that defendants had adduced sufficient evidence to exonerate them from blame; and their evidence, which was affirmative in its character, was more satisfactory than the negative evidence of the plaintiff, and that the defendants were entitled to the benefit of the doubt, and the action was dismissed. That was the judgment in the Rolland case. The question was whether there was any difference in the present case. Thirteen witnesses had been examined for the plaintiff, and five for the defendant. The witnesses for plaintiff did not say positively that the bell was not rung. They merely said that they did not hear the bell ringing, and that if it had been rung, they would probably have heard it. His Honor quoted the remarks which he had made in the case of *Wilson* v. *Grand Trunk Co.*, in giving the judgment of the Court of Review, allowing a new trial (see 2 Legal News pp. 45–47). The burden of proof was on plaintiff to show violation of duty by defendants. Another case, *Prideaux* v. *City of Mineral Point*, in the last volume but one of American Reports, was also referred to as to proof of negligence, and what proofs were upon the plaintiff, and what were not upon him, in chief, in cases like the present one. In the present case the plaintiff assumed the burden of proof, and at the end of his case the defendant had gone into proof. Upon the whole the Court had to say whether there was proof of fault by defendants, or, of contributory negligence on the part of the plaintiff. His Honor was of opinion that there was the latter, and the accident was unavoidable on the part of the Grand Trunk. The moment the engine driver saw the plaintiff he tried to back. The plaintiff was jumping the track at the time, and he was struck, being too late, by half a second, in clearing the rails. It was clearly proved by defendants' witnesses that the bell was rung. The accident took place about four o'clock in the morning, when few persons were about, and all who were there swear that the bell was rung. The affirmative testimony that the bell was rung was stronger than the counter negative testimony. Judgment would, therefore, go, dismissing the action, the plaintiff not having proved culpable negligence on the part of defendants' employees, and the defendants having proved the allegation of their first plea, to the effect that the injury was caused by plaintiff's own want of care.

The judgment is as follows:—

"The Court, etc.,

"Considering that plaintiff has not proved the material allegations of his declaration, and particularly the one charging culpable negligence and neglect on the part of the employees and servants of defendants in charge of defendants' locomotive, to comply with the rules and regulations by law established for the passage of the locomotives and trains of the defendants through the streets of the city;

"Considering that defendants have proved the allegations of their first plea, to the effect that the injury to plaintiff complained about was caused by his own want of care;

"Considering that the collision, as it occurred, by which plaintiff was injured in July last, was avoidable by plaintiff, had he used proper or even common care, and that the defendants' servants were in no default, but using care, and that they did what was possible so soon as seeing that plaintiff's want of care was likely to lead to collision;

"Considering that the locomotive bell had been rung and was ringing at the time of the collision;

"Considering defendants not liable, doth dismiss plaintiff's action with costs."

Action dismissed.

Curran & Driscoll for plaintiff.

G. Macrae for defendants.

SUPERIOR COURT.

MONTREAL, March 20, 1880.

BREWIS v. STEWART.

Contract made by master while his ship is in peril—Ratification after the peril is past.

The agreement sued on was in these terms:—

"S. S. Nettlesworth, 19th July, 1879.

"I hereby promise to pay, as per agreement