

RECENT ENGLISH DECISIONS.

tion by way of mortgage to the Union Bank for value, and the question was whether the National Bank could hold the mortgaged property as security for advances made by them subsequent to their receipt of the notice of the mortgage to the Union Bank. The Scotch courts held that they could, but the House of Lords held that the principle of *Hopkinson v. Rolt*, 9 H. L. C. 514, governed, and therefore reversed the decision.

NEGLECT—RAILWAY CO.—ONUS OF PROOF.

Wakelin v. London and South Western Ry. Co., 12 App. Cas. 41, was an action by a widow, under Lord Campbell's Act, to recover damages for the death of her husband, who was run over by the defendants' train, and shows the difficulties that lie in the way of suitors under such circumstances. The defendants' line crossed a public footpath on the level, the approaches to the crossing being guarded by hand gates. A watchman held guard during the day, but was withdrawn at night. The dead body of the plaintiff's husband was found on the line near the level crossing at night, having been killed by a train which carried the usual head light, but did not whistle or give other warning of its approach. No evidence was forthcoming to show how the deceased got on the line. Under this state of facts it was held by the House of Lords (affirming the Court of Appeal), that even assuming there was evidence of negligence on the part of the company, there was no evidence to connect such negligence with the accident, and that, therefore, the plaintiff failed.

In giving judgment their lordships, however, dissented from the view of the Master of the Rolls, that it was incumbent on the plaintiff, not only to establish that the accident was occasioned by the negligence of the defendants, but also to give affirmative evidence that the deceased did not negligently contribute to the accident. The burden of proving contributory negligence on the part of the deceased, their lordships thought lies, in the first place, on the party who alleges it.

PRACTICE—APPEAL ON THE FACTS.

Allen v. The Quebec Warehouse, 12 App. Cas. 101, was an attempt on the part of the appellants to induce the Privy Council to reverse the decision of the court below on the facts. The action was brought against the defend-

ants for damage to the plaintiff's ship which was injured owing, as was alleged, to a post on the defendants' wharf, to which it was moored, giving away. The court below dismissed the action. The defendants had brought a cross action for damage to the wharf, but this action had also been dismissed, and there was no appeal. Their lordships came to the conclusion that notwithstanding there had been these diverse findings of fact, yet they could not on appeal decide the case upon the view they would have taken of the facts if they had been a court of first instance, but that their decision must depend on whether or not they could say that it had been established that the judgment of the court below was clearly wrong. The appeal was dismissed.

PRACTICE—CONSOLIDATION OF APPEALS.

In *Heddingh v. Denysen*, 12 App. Cas. 107, the Privy Council on motion consolidated the appeal with two other appeals arising out of the same will, but in a suit which had not been instituted until a year after the first appeal had been admitted; The appeals involving the same subject matter, and it appearing that there would be a saving of expense if they were heard together.

SALVAGE—REDUCTION OF SALVAGE ALLOWED.

The Owners of the Allen v. Gow, 12 App. Cas. 118, was an appeal in an admiralty case as to the quantum of a allowance for salvage. The judicial committee reduced the amount from \$12,000 to \$7,600.

PRACTICE—FOREIGN JUDGMENT—DEBTOR'S TRUSTEES—INTEREST ON JUDGMENT.

Hawksford v. Renouf, 12 App. Cas. 122, was an appeal from the Royal Court of Jersey to the Privy Council. The plaintiff who had recovered a judgment in England, sued on the judgment in Jersey, and joined as defendants the judgment debtor and certain persons who held property for him as trustees. The Jersey Court gave judgment in favour of the plaintiff for the amount of the judgment and interest thereon from its date, at 5 per cent., against all the defendants. The defendants appealed, and the judicial committee held that the trustees were improperly joined as defendants, and reversed the judgment as against them; and reduced the amount of it as against the judgment debtor by the costs occasioned by adding the trustees, and also reduced the inter-