

and in the following session the Legislature passed an Act providing that "In the case of a County Court judgment, an application may be made under Rule 803 or Rule 804, as the case may be. This amendment shall apply to orders and judgments heretofore made or entered, except in cases where such orders or judgments have been attacked before the passing of this amendment."

Held, SEDGEWICK, J., dissenting, that the words "Orders and judgments" in said clause refer only to orders and judgments of the Queen's Bench for sale of lands on County Court judgments and not to orders and judgments of the County Court.

Held further, reversing the judgment of the Queen's Bench; (13 Man. L.R. 419), DAVIES, J., dissenting, that the clause had retroactive operation only to the extent that orders for sale by the Queen's Bench on County Court judgments made previously were valid from the date on which the clause came into force, but not from the date on which they were made.

Held, per SEDGEWICK, J., that the clause had no retroactive operation at all. Appeal allowed with costs.

Aylesworth, K.C., and *Phillips*, for appellant. *J. Stewart Tupper*, K.C., for respondents.

Ont.] LONDON STREET RAILWAY CO. v. BROWN. [Nov. 16, 1901.

Negligence—Findings of jury—Contributory negligence.

In an action founded on personal injuries caused by a street car the jury found that defendant's negligence was the cause of the accident, and also that plaintiff had been negligent in not looking out for the car.

Held, reversing the judgment of the Court of Appeal (2 O.L.R. 53) that as the charge to the jury had properly explained the law as to contributory negligence the latter finding must be considered to mean that the accident would not have occurred but for the plaintiff's own negligence and he could not recover. Appeal allowed with costs.

Hellmuth, for appellant. *Gibbons*, K.C., for respondent.

Province of Ontario.

COURT OF APPEAL

From Boyd, C.]

KING v. LAW.

[Nov. 14, 1901.

Building contract—Contract to do work for a specific sum—Destruction of building before completion—Right to sue on a quantum meruit.

The defendant, who had taken a contract for the erection of a dwelling house at \$4,050 accepted the plaintiff's tender to do the plumbing and tinsmithing work for \$500; but before the completion of the plaintiff's