

Divisional Court.]

[Dec. 12, 1904.]

HAMMOND v. GRAND TRUNK RY. CO.

*Master and servant—Negligence of servant—Injury to third person—Scope of employment.*

A watchman was employed by the defendants to lower bars or gates across the highway at each side of a crossing on the approach of trains and to raise them as soon as the trains had passed, the gates being lowered and raised by means of a lever which was some distance from them. While a train was passing and the gates down the plaintiff—a lad of sixteen—and two other lads climbed or leaned upon one of the gates, and the watchman was prevented by their weight from raising the gates after the train had passed. In order to get them off he threw a cinder towards them which struck the plaintiff in the eye destroying the sight.

*Held*, that, this act having been done not of mere malice or ill-temper or to punish the plaintiff, but for the purpose of warning him to get off the gate and so of enabling the watchman to perform the duty required of him, the defendants, his employers, were responsible in damages as well as the watchman who was also a defendant. Judgment of ANGLIN, J., affirmed.

*Biddell*, K.C., for appellants. *Clute*, K.C., and *E. G. Morris*, for respondents.

Trial—Anglin, J.] KENT v. MUNROE.

[Dec. 12, 1904.]

*Bank—Winding-up—Promissory note returning after order—Set-off of deposit to credit of indorser—Note made by municipal officers for municipal purposes—Personal liability—Set-off of deposit to credit of municipality.*

The funds of a township corporation were deposited in a chartered bank to the credit of an account kept in the name of "A.M., treasurer of R." The township council purported, by by-law, to authorize the treasurer and reeve to borrow from the bank money to be used for drainage purposes. Accordingly the treasurer made a promissory note, which he signed in his own name, with the words "treasurer of the township of R." after it, in favour of the reeve, and the reeve indorsed it, signing his own name, with the words "reeve of R." after it. This note was discounted by the bank, the proceeds placed to the credit of the account referred to, and paid out for the drainage purposes specified. The bank being in liquidation under the Dominion Winding-up Act, the liquidators sued the reeve and treasurer in their personal capacities upon the note, which matured after the winding-up order.