

hold the money at least until the plaintiff demanded it ; and, as therewas no demand before the 16th May, 1895, the action was in time.

3. The agreement was not one which offended against the law relating to frauds upon creditors ; and the defendants were not in a position to raise such a question, not having pleaded it. *Day v. Day*, 17 A.R. 157. Judgment of BRITTON, J., reversed.

*Mabee*, K.C., for plaintiff (appellants). *Idington*, K.C., for defendants.

From MacMahon, J.]

[Jan. 26.

MCKAY v. GRAND TRUNK R.W. CO.

*Railway—Crossing—Speed of trains—Fences—Statutory requirements—Negligence—Injury to person crossing track—Contributory negligence—Findings of jury.*

By the Dominion Railway Act, 1888, s. 197, as amended by 55 & 56 Vict., c. 27, s. 6, it is provided that "at every public road crossing at rail level of the railway, the fence on both sides of the track shall be turned in to the cattle guards, so as to allow of the safe passage of trains." By s. 259 of the former Act, as amended by s. 8 of the latter, it is provided that "no locomotive or railway engine shall pass in or through any thickly peopled portion of any city, town, or village, at a speed greater than six miles an hour, unless the track is fenced in the manner prescribed by this Act."

*Held*, that the words "in the manner prescribed by this Act" do not refer to the turning in of the fence to the cattle guards ; and, although no other fence is specifically prescribed in the railway legislation the meaning of s. 259 is, that unless the track, including the crossing, is properly fenced or otherwise protected so as to efficiently warn or bar the traveller while a train is crossing, or immediately about to cross, the maximum speed at which a train may cross in thickly peopled portions of cities, towns and villages, is six miles an hour.

The plaintiff was struck by a train at a crossing over a main street in an incorporated town, not protected by a gate or watchman. In an action to recover damages for his injuries, the jury found that the train was travelling at the rate of twenty miles an hour, and that the injury complained of was caused by this excessive speed, coupled with the absence of proper protection at the crossing, and without negligence on the plaintiff's part ; and the Court, though there was strong evidence of contributory negligence, declined to interfere. Judgment of MACMAHON, J., affirmed.

*Riddell*, K.C., for defendants (appellants). *Hellmuth*, K.C., for plaintiff.