

recover damages for his death, questions were submitted to the jury, and answered in favour of the plaintiff, except the following: "Could the deceased by the exercise of ordinary and reasonable care have avoided the accident which occasioned his death; and, if so, in what respect or how could the deceased have avoided the accident?" To this the jury answered: "Yes, he might have taken another road, or if sober, on a bright night, he might have avoided the hole."

*Held*, that this was a finding of contributory negligence, and the action was properly dismissed, though the trial judge (10 O.L.R. 37) dismissed it on another ground.

*Creswicke*, for plaintiff. *DuVernet*, for defendants.

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Divisional Court.]      WOOD v. ADAMS.      [Oct. 28, 1905.

*Contract—Illegality—Non-recovery back of money paid, cancellation of notes—Notes to remain on files of Court.*

The Courts will not intervene at the instance of a party to an illegal contract, to enable him to obtain relief from the negligence thereof.

W. having been threatened with a criminal prosecution for having had sexual intercourse with a young girl under sixteen years of age effected a settlement whereby cash payments were made and promissory notes given. On his death, he having in no way repudiated the settlement during his lifetime, his administrator brought an action for the recovery of the money paid and the cancellation of the notes.

*Held*, that the action was not maintainable, but the notes having been filed in Court, it was ordered that they remain on the files until further order.

*Aylesworth*, K.C., and *Panton*, for plaintiff, appellant. *Mabee*, K.C., for defendant.

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Mabee, J.]

[Nov. 1, 1905.

MASSEY-HARRIS CO. v. DE LAVAL SEPARATOR CO.

*Defamation—Evidence—Discovery—Circular—Names of recipients—Source of information.*

In an action for damages alleged to have been sustained by reason of the sending out by the defendants of a circular stating that they had been "advised that the (plaintiffs) had decided to discontinue their separator business," the defendants' manager was ordered to give on his examination for discovery the