captain be justified in throwing him overboard? I am of opinion that there was evidence to go to the jury that the conductor did use an excessive mode of getting rid of this man. The jury found that the mode adopted was improper. The judge was satisfied with their finding. I cannot, upon any principle, enter up a verdict for the defendant in the face of that finding by the jury on the evidence.

LORD ASHBOURNE, C.: The plaintiff tried to force his way into the tramcar while in motion, and the plaintiff, being intoxicated, was acting illegally and negligently. What is the duty of a conductor of a tramcar when an intoxicated person tries to force his way into a car? It is to keep him out with reasonable and proper force. The plaintiff was never lawfully in the car. The plaintiff's effort was one and the conductor's effort was one. It was the plaintiff's own act of negligence that caused the injuries, and he was the author of his own wrong.

FITZGIBBON, L.J.: It is impossible to allow the verdict for the plaintiff in this case to stand without breaking the just and salutary rule that no man can recover damages for his own wrongful act. The principle upon which this case should be decided is that on the undisputed evidence the plaintiff's own unlawful or improper act was the direct, operative, and primary cause of his injuries. The occurrence constituted one transaction; throughout it all the plaintiff was a wrongdoer. The conductor, at the worst, acted imprudently, but yet neither wrongfully nor negligently, in endeavouring to discharge his duty towards his employer, and against a man who, by his own act, had placed himself in a position of peril and the conductor in a position of difficulty. If Delany had no right to enter the car, he had no right to stand on the step. He was not to be treated with undue violence; it was lawful to remove him; of course it ought to be done in a reasonable manner. It is said that the company is liable because the conductor did not stop the car. I deny that in dealing with a wrongdoer the company can be held liable for an error of judgment on the part of its servant; and, in the next place, I deny that the conductor was under any obligation to stop the tramcar; the plaintiff was in a position of peril of his own making, and as he got up he was bound to get down.

Appeal allowed.

May 2nd, 1892.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Common Pleas Division.

Div'l Court.] [June 25.

MCLAUGHLIN *v.* HAMMILL.

Interpleader—Claim for rent—Right of sheriff to interplead—Con. Rule 1141.

The express statutory provision giving sheriffs the right to interplead where a claim against the goods is made by a landlord for rent was omitted in the Revised Statutes, it being stated in the appendix thereto that it was superseded by Con. Rule 1141, which provides that the sheriff, etc., may interplead where a claim is made, etc., to any money, goods, or chattels, etc., taken in execution, etc., by any person other than the person against whom the process issued.

Held, that the right to interplead, where a claim for rent is made, still exists.

Aylesworth, Q.C., for the sheriff.

Strathy, Q.C., for the execution creditor.

H. S. Osler for the landlord.

CRANE *v.* RAPPLE.

Sale of land—Parol contract—Possession—Partner's share.

Land owned by two persons in partnership was sold under a parol contract by one of the partners to a purchaser under the belief that the co-partner would agree in the sale and the whole be conveyed, the purchaser being put into possession; but the co-partner refused to carry out the sale.

Held, that the so placing the purchaser in possession was sufficient to prevent the Statute of Frauds being set up as a bar to the proof of the parol contract; and that the purchaser could elect to take the selling partner's share with an abatement of the purchaser's money and specific performance as against him.

Walter Cassels, Q.C., for the plaintiffs.

Watson, Q.C., for the defendant.