

Com. Pleas.]

NOTES OF CANADIAN CASES.

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shewed that, even if plaintiff had been watching the fire he could not have prevented its spreading.

Held, under the circumstances, the defendant was not liable for the damage sustained by the plaintiff.

Osler, Q.C., for the plaintiff.

Falconbridge, for the defendant.

NOTT V. NOTT.

Arbitration—Award—How to be executed.

The three arbitrators to a reference on the close of the evidence agreed on their finding, and a minute thereof was made in writing by one of them, but not signed; and it was understood that nothing further was to be done but have a formal award drawn up and executed. Next day the award was drawn up and executed by two of the arbitrators, in the presence of each other, but in the absence of the third arbitrator, who a couple of days afterwards executed it in the presence of one of the other arbitrators.

Held, that the award should have been executed by the three arbitrators together, and not having been so executed is invalid.

Marsh, for the plaintiff.

C. Ritchie, for the defendants.

WELTON V. NORTHERN RAILWAY CO.

Railways—Accident—Negligence—Contributory negligence—Automatic bell.

The defendants' track crossed the highway at an acute angle and was some seven feet above the highway, which was graded up to it, and the view was obstructed by some bushes. The plaintiff, early in the morning, it not being quite daybreak, was sitting on a bob-sleigh driving a yoke of oxen along the road, when, just as he came on the track, he saw a train approaching, when he jumped to the off side on to the track and hit the off ox to spring aside and clear the track, but before plaintiff could get clear himself, he was struck by the train and injured. It was objected that if the plaintiff had jumped on the nigh side he would have escaped injury, and that by his act he voluntarily placed himself in a position of danger. The plaintiff, however, said that the way he acted was the quickest way of getting out of the danger. On the part of the plaintiff,

it was shown that neither the bell was rung nor the whistle sounded; while defendants proved that the bell was an automatic bell and being rung by the action of the wheels; that it was ringing when the engine left the last station. One of plaintiff's witnesses stated that these bells get out of order. The jury found that the whistle was not sounded or the bell rung—that it was not in good order; and that the plaintiff, under the circumstances, exercised reasonable care.

Held, that it could not be said that the findings were not justified by the evidence, and the Court, therefore, refused to interfere.

Creasor, Q.C., for the plaintiffs.

Osler, Q.C., for the defendants.

MAUGHAN V. CASIE.

Trespass—Highway—Registry Act—Right of way—Surveyors' Act—Short Forms Act—Contemporaneous conveyances—Pleading—Unity of title.

The trustees under C.'s will executed contemporaneous conveyances under the Short Forms Act of a farm divided into six parcels to the six surviving children, according to a registered plan. The farm had theretofore been held by unity of title. The description of parcel 2 included a lane described in the plan as a right of way, the use of which was reserved in the deed for the owners of parcels 4 and 6, which adjoined it, and to whom it was a way of necessity. Parcel 3, which adjoined the way (but to which it was not a way of necessity) was conveyed without any mention of the lane.

Held, that the grantee of parcel 3 could not claim a right of way over the lane, parcel 2 being expressly subjected to a right of way in favour of parcels 4 and 6. That the owner of parcel 3 could not burden parcel 2 with any other servitude than that granted to the owners of parcels 4 and 6. *Held*, also, that R. S. O. c. 102, does not apply, because of the exception expressly made in the deed in favour of parcels 4 and 6. That there was not a continuous easement; that the way was not a public highway; that the plaintiff's right had not been barred by the Statute of Limitations; that the ownership by defendant of a part of parcel 4 did not justify the trespass complained of. The pleadings remarked upon.