

The case of *Canadian Cotton Co. v. Parmalee*, 13 P.R. 308, so far as it goes, is distinctly in the applicants' favour. See also *Simpson v. Chase*, 14 P.R. 280.

The conclusion appears to be that, in view of the facts of this case, it is brought within the scope and intention of Rule 935: "That wherever equitable execution is obtainable (and an appointment of a receiver is in that nature) the moneys can be garnisheed, provided they arise out of trust or contract; that as the debtor would be satisfied by a money payment, a right arises to move for an attaching order."

I therefore refuse an order for a receiver, but the applicants can take an order attaching *pro tanto*, to the amount of plaintiff's debt and costs, the legacy in question in the administrators' hands, payable on realization of the estate; the plaintiff's costs of this application, including the administrators' costs (which he is to pay and add to his own), to be taxed and added to his judgment debt and other costs.

IRELAND.

COURT OF APPEAL.

DELANY v. THE DUBLIN UNITED TRAMWAY COMPANY.

Contributory negligence — Rights and duties of tramcar conductors — Intoxicated persons entering a tramcar in motion are trespassers.
[26 Irish L.T. Rep. 122.]

The plaintiff, in a state of intoxication, attempted to enter the defendant's tramcar when in motion. He got on the lower step, sustaining himself in that position by holding the upright bar. The conductor intercepted his further ingress. The plaintiff, continuing to hold the bar, was dragged a distance of three yards; he fell to the road, and incurred serious injuries to his spine. The evidence for the plaintiff and that for the defendant was directly opposed as to whether the conductor pushed the plaintiff, thereby causing him to have no support for his feet, and also as to whether, when the conductor first resisted the effort of the plaintiff to enter the car, the plaintiff had not got both his feet on the step. An action for negligence causing damage, estimated at £3,000, brought by Delany, resulted in a disagreement of the jury. A new writ of summons having been issued, a second trial was held, and at the con-

clusion of his summing-up the judge put the following issues: (1) Did the plaintiff get on the step of the tramcar? (2) If so, did the conductor remove him? (3) Was there negligence on the part of the conductor in the manner in which he removed the plaintiff under the circumstances that existed? (4) If so, were the plaintiff's injuries caused thereby? (5) Could the plaintiff, by the exercise of reasonable care on his part, have avoided the consequences of the occurrence? These questions were all answered in favour of the plaintiff, and the damages were assessed at £500. Judgment was entered for the plaintiff. The defendants obtained a conditional order to set aside the verdict, on the ground that the judge ought to have directed a verdict for the company, or, in the alternative, for a new trial. This order was set aside by the Exchequer Division. From this decision the defendants appealed.

Adams, Q.C. (with him *O'Shaughnessy, Q.C.*, and *Harrington, M.P.*), for the plaintiff.

Walker, Q.C. (with him *The Macdermott, Q.C.*, and *John Gordon*), for the defendants.

Cases cited: *Radley v. L. & N.W. Ry. Co.*, 1 App. Cas. 754; *Murgatroyd v. Blackburn, etc., Tramway Co.*, 3 Times L.R. 451; *The Byewell Castle*, 41 L.T. 747; *Davies v. Mann*, 10 M. & W. 546; *Cahill v. L. & N.W. Ry. Co.*, 10 W. R. 321; *Coyle v. Great Northern Ry. Co. of Ireland*, 20 L.R.I.C.L. 109; *Wakelin v. L. & S. W. Ry. Co.*, 12 App. J.L. 41; *Bridge v. Grand Junction Ry. Co.*, 2 M. & W. 244; *Flower v. Adam*, 2 Taunt. 214; *Rounds v. Delaware Ry. Co.*, 64 N.Y. 129; *Seymour v. Greenwood*, 7 H. & N. 355.

BARRY, L.J.: It is said that it was the plaintiff's own misconduct that was the primary cause of the injuries; well, that applies to every case of contributory negligence. The law as to repelling trespass is very clear. A man is justified in using force in defence of his person or property, subject to the rule that the force employed to repel trespass must be proportionate to the injury anticipated from the trespass. The question here is, was it for a jury to say whether the conductor, by pushing a drunken man off the step of the tramcar—the car being in motion—to the road on his back, was acting reasonably and properly? If a drunken fellow got up to the roof of the car, would the conductor be justified in flinging him off? Take the case of a stowaway—would the