

consideration of all the surrounding circumstances.

Facts may appear tending to show that the plaintiff was surprised or thrown off his guard, or was in other respects at a disadvantage, and that though he acted imprudently there was some excuse for what he did. Each case depends upon its own circumstances, and these, even when the defendants' negligence consists in the breach of some statutory duty, may vary all the way from absolute recklessness on the part of the person injured, his own folly and not the defendants' negligence causing the loss, to a case where there is evidence on both sides of the question whether the loss is attributable to the defendants' negligence or the plaintiff's own want of care in avoiding it.

If, in the plaintiff's favor, we assume this case to be one of the latter class, because the more precise evidence of the distance from which the train could be seen from the road comes from the defendants' witnesses, and because the accident happened after night-fall, it nevertheless appears to me that the learned judge should have held that the plaintiff's own negligence here so materially or directly contributed to his injury as to disentitle him to recover. To show why this is so, is almost to repeat the evidence already stated. He knew that he was approaching a railway crossing, and that a train might be expected to pass about that time, the seat in his waggon facing in the direction opposite to that from which the train would come. The night was clear and still; he drove up slowly to the crossing, the horses first setting their feet over the rail before the collision occurred; yet up to the moment before it, he had neither looked nor listened for the train. It hardly admits of a doubt that if he had done so while he had the opportunity, he would have both seen and heard it, and that with his horses going at a walk, and under control, he could have turned them aside before reaching the line. No circumstances of surprise or embarrassment are proved, and the case is one in which to adopt the language of Lord Halsbury in *Walkchin v. L. & S. W. Ry.*, 12 App. Cas. 41, it may almost be said that the horses ran against the engine, rather than that the engine ran down the horses. The

time which elapsed between the moment when the train came in sight and the collision was no doubt brief, and a very slight difference in the facts might have warranted the plaintiff's conduct in being treated as excusable imprudence, but on his own showing there was such an absolute want of common reasonable care on his part, as to admit of no other conclusion than that the injury was the result of his own contributory negligence.

The cases of *Davey v. L. & S. W. R.*, 12 Q. B. D., 70, 77; *Commissioners of Railways v. Brown*, 13 App. Cas., may be referred to.

I think the appeal should be allowed.

Appeal allowed.

POLICE COURT.

MONTREAL, January 14, 1889.

Before Mr. DUGAS.

CARSON V. DEVAULT.

Selling liquor to minors—Guilty knowledge—41 Vict., c. 3—51-52 Vict., c. 10.

Mr. DUGAS:—This case is taken under an amendment to the license law, passed at the last session of our provincial legislature, which forbids the sale of intoxicating liquors to minors. Two young men, being minors, Gales and Corbeil, styling themselves detectives, combined together and undertook to go to different licensed establishments in this city and elsewhere, with the object of obtaining liquor, if possible, and afterwards prosecuting those whom they would entrap doing so. To better succeed, not to awaken the attention of the seller as to their age, they imagined in the majority of cases to use ounce ordinary hair oil vials, and have them filled, at the cost of five cents, with gin or brandy, so as to naturally lead to believe that the liquor was needed for medicinal or other household purposes. It never was intended to be used by the purchasers, except as a corroborative proof of their statement in court. An exception was made to the admissibility of their testimony to prove their age. It will suffice to cite the authority of Roscoe to remove this objection: "In cases where the offence depends upon the age, this must be proved in the usual way, by the girl herself, or by a person who can