

held, that he was bound to use caution in crossing the track at an hour when trains were usually passing, and the Company not being guilty of negligence or omission of the customary warnings, the plaintiff was not entitled to damages for injuries sustained.

**PÉRURIAM.** The plaintiff, a physician, complains that on the 23rd of November, 1880, at half-past five p.m., on St. Philippe street, at St. Henri, while crossing the railroad track there, he was struck by a *convoi* of the defendant's railroad. It is a very dangerous place, says plaintiff. The collision made him "*sauter une vingtaine de pieds dans l'air*," he was going towards Point St. Charles, along St. Philippe street, and was struck by the train coming from Montreal, and moving westwardly. He had to keep his bed for a month, and a *maladie incurable* has been induced, which will abridge his existence several years, *de plusieurs années*. He suffered agonies (*les souffrances les plus aiguës*) for a month. At that place no sign was up to indicate the railroad track is there, and no lights there lighted it up. On the left side of St. Philippe street buildings reach to seven or eight feet from the railroad, and prevent seeing a train approaching from Montreal. Consequently, says the plaintiff's declaration, it was gross negligence of the defendant not to have barriers and lights there. The plaintiff adds that no bell nor whistle announced the approach of that train on that night; and here again was gross negligence. Evidently, says plaintiff's declaration, it was the fault of the defendant that the accident happened. Plaintiff had to call in doctors, which had cost him at least \$200. Further, the plaintiff's *voiture* was broken, and damages were caused to the amount of \$18 in repairs. Finally, at least \$300 was lost to plaintiff of earnings from attending to his usual practice. Considering all these damages, and the fact that from this accident the plaintiff's existence will be abridged, *infailliblement, de plusieurs années*, \$10,000 are the least damages that ought to be awarded plaintiff, says his declaration.

The plea is the general issue; denying plaintiff's allegations; denying that he has suffered as alleged, &c.; and a special plea, alleging that the accident was not caused by any fault of defendant, but that if plaintiff was hurt it was by his own fault and imprudence;

that plaintiff caused his own damages or contributed to them by his own negligence and imprudence.

The principal witness for plaintiff is his brother, Jos. Henri Roy, aged 19 years, a merchant's or shop clerk. He was driving plaintiff in a cariole. They had reached the track, when plaintiff cried out, "*Voilà les chars*." The driver jerked the horse, who made a leap and got across the track, but the hind part of the sleigh was struck. Plaintiff *est tombé à terre*, says Henri. He swears that they could not see the train approaching owing to a building; *ni sifflet, ni cloche*, was to be heard. The train was going more than six miles an hour, says Henri. He adds: It was a train of four cars drawn by an engine. He is certain, *positif*, that there were four or five, and that it was a freight train.

It is proved by the defendants that that November only three trains left Montreal passing St. Philippe street and going west of it, between 5 and 6 o'clock; one leaving Montreal at 5, one at one minute past 5, and the third at 20 minutes past 5. The two first were passenger trains, and the third one an engine with one freight car. Nobody on any of those trains felt any shock or was aware of having collided with anything that night. In approaching St. Philippe street crossing, all the engine bells were ringing. This is proved abundantly, not merely by the firemen and others in the employ of defendants, but by four indifferent persons. Upon this point Henri is flatly contradicted, as is plaintiff's declaration. Henri is proved untrue, also, in stating that the train was going more than six miles an hour, also in stating that it was a freight train of four or five cars, positively; for two and a half miles an hour was the greatest speed of the train there, and it was composed of only one freight car drawn by a pilot engine. If plaintiff's *voiture* was struck, it must have been by this pilot engine train, for none other passed there at the time stated in plaintiff's declaration, and it must have been very slightly for nobody on the train to perceive any collision. That plaintiff was thrown 25 feet into the air by the collision is untrue; there is not a shadow of proof of that; on the contrary, there is reason to doubt that plaintiff was thrown out of his vehicle. Henri says he was thrown out *en bas*. Leonard says he was