

# The Ontario Weekly Notes

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VOL. XIX.      TORONTO, FEBRUARY 4, 1921.      No. 21

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APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

JANUARY 26TH, 1921.

\*WALLACE v. GRAND TRUNK R. W. CO.

*Railway—Level Highway Crossing—Person Driving over Tracks Struck by Engine—Evidence as to Responsibility of Defendants for Engine—Leave to Adduce on Appeal—Death—Action under Fatal Accidents Act—Negligence—Cause of Accident—Contributory Negligence—Findings of Jury—Evidence—Inferences from Undisputed Facts — Damages — Assessment of Excessive Amount—New Assessment Directed—Costs.*

An appeal by the defendants from the judgment of LOGIE, J., in favour of the plaintiff, after trial of the action with a jury at Belleville.

The action was brought, under the Fatal Accidents Act, by the mother and administratrix of the estate of George Clifford Wallace, deceased, to recover damages for his death.

On the 20th December, 1919, the deceased was, with his brother Arthur, driving to the city of Belleville, along a highway in the township of Thurlow. A railway, alleged to be operated by the defendants, intersects by a level crossing the gravel highway, and at the point of intersection, a level highway crossing, a railway engine, also alleged to be operated by the defendant company, struck the buggy in which George and his brother were driving, and he was killed.

The plaintiff alleged a breach of statutory duty on the part of the defendants, and that that was the cause of the collision and death.

The defendants denied negligence and alleged contributory negligence on the part of the deceased.

\* This case and all others so marked to be reported in the Ontario Law Reports.