COURT OF QUEEN'S BENCH.

MONTREAL, September 23, 1881.

DORION, C.J., MONK, TESSIER, CROSS and BABY, JJ.

WILSON (plff. below), Appellant; and THE GRAND TRUNK RAILWAY CO. OF CANADA (deft. below), Respondent.

Damages—Personal Injuries—Verdict of Jury—New Trial.

Where the verdict of the jury is supported by evidence, although such evidence be, in some respects, contradicted by other testimony, the verdict of the jury, based on their appreciation of the evidence, will not usually be disturbed.

The appeal was from a judgment of the Court of Review, Montreal, ordering a new trial. See 2 Legal News, pp. 45-47, for judgment of the Court below.

The appellant, by his action, claimed $6,000 damages for personal injuries sustained by him, by being struck by a locomotive on the respondents' railway. The jury found for the appellant, $5,000 damages; but the Court of Review set aside this verdict as being contrary to the evidence. The plaintiff appealed.

In appeal, the judgment of the Court of of Review was reversed, Cross and Baby, JJ., dissenting, and the verdict was maintained. The registered judgment sufficiently explains the grounds of reversal:—

"The Court, etc. . . . .

"Considering that the findings of the jury in this cause are supported by the direct and positive testimony of several disinterested and unimpeached witnesses, that the appellant was struck as alleged in the declaration by a locomotive engine of the respondents while he was crossing the railway track at the public railway crossing over Jacques Cartier street in the town of St. Johns, P.Q., on his way from one railway office or freight shed to another, in the discharge of his duties as a Custom House officer; that he was so struck through no fault or negligence on his part, but through the fault and negligence of the employees of the respondents, who neglected to give the necessary warnings by sounding the whistle and ringing the bell as they were by law bound to do.

"And considering that, although the evidence so given was, in some respects, contradicted by the testimony of other witnesses, it was within the exclusive province of the jury to weigh such evidence and to find the special facts which formed the subject of their enquiry, according to their own conclusions as to the credit they attached to the testimony adduced before them;

"And considering that the jury could not be misled by that portion of the charge of the Judge presiding at the trial, to which objection has been taken by the respondents;

"And considering that there is error in the judgment rendered on the 31st of January, 1879, by the three Judges of the Superior Court sitting in Review, at the City of Montreal, and by which the verdict of the jury was set aside and a new trial was ordered;

"This Court doth reverse the said judgment of the 31st of January, 1879; and proceeding to render the judgment which the said Superior Court should have rendered, doth reject the motion of the said respondents for a new trial; and adjudicating on the motion of the appellant for judgment on the verdict of the jury, doth condemn the said respondent to pay to the appellant the sum of $5,000, with interest," etc.

Judgment reversed.*

E. Carter, Q.C. (with him *L. H. Davidson*), for Appellant.

Geo. Macrae, Q.C., for Respondent.

* The case is now before the Supreme Court of Canada.

GENERAL NOTES.

Lord Coke says that Moses was the first reporter of law.

The legislature of Ontario passed an Act during the last session, intended to enable municipalities to found free libraries, and maintain them in an efficient condition, by levying a small rate. It will be interesting to learn to what extent municipalities will avail themselves of the provisions of this law.

There is a curious case in Fortescue's Reports, relating to the privilege of peers, in which the bailiff who arrested a lord was forced by the Court to kneel down and ask his pardon, though he alleged that he had acted by mistake, for that his lordship had a dirty shirt, a worn-out suit of clothes, and only sixpence in his pocket, so that he could not believe he was a peer, and arrested him through inadvertence.