Plaintiff's infancy has, I think, a direct bearing upon the question of defendants' liability. . . .

[Reference to Russell on Crimes, 6th ed., vol. 1, p. 114; Simpson on Infants, 2nd ed., pp. 110, 111; Gardner v. Grace, 1 F. & F. 359; Makins v. Piggott, 29 S. C. R. 188; McShane v. Toronto, Hamilton, and Buffalo R. W. Co., 31 O. R. 185.]

In the present case it has not, in my judgment, been made to appear that it was necessarily by plaintiff's own negligence that the injury was caused. Without deciding whether an infant of tender years can be guilty of contributory negligence, I think, upon the authorities, that in the present case it was for the jury to say, having regard to plaintiff's age, to the location, and the circumstances of the case, whether or not plaintiff was guilty of contributory negligence. Plaintiff was not a trespasser. He was there as of right. So far as defendants were concerned, he had a right to ride his waggon if he pleased in descending the grade. At all events he had not been warned not to do so, even if the by-law applied. Upon the facts in this case, I think the trial Judge was right in submitting the whole case to the jury, and . . . I see no reason to disturb the verdict. The damages are not, I think, unreasonable, having regard to the nature and extent of the injuries.

Appeal dismissed with costs.

BRITTON, J., gave reasons, in writing for the same conclusion.

FALCONBRIDGE, C.J., also concurred.

DECEMBER 15TH, 1906.

DIVISIONAL COURT.

RE CRICHTON.

Medical Practitioner—College of Physicians and Surgeons of Ontario—Erasure of Name from Register—Ontario Medical Act—" Infamous and Disgraceful Conduct in a Professional Respect"—Advertising Remedy for Disease—Secrecy as to Preparation of Remedy—Misleading or Defrauding Public—Inquiry by Committee of Medical Council—Adoption of Report—Charge—Refusal of Particulars—Change in Nature of Alleged Offence—Mistrial—Appeal.

Appeal by Alexander Crichton, a physician and surgeon, from a resolution or decision of the council of the College of