

THE
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FALCONBRIDGE, C.J.

NOVEMBER 14TH, 1902.

TRIAL.

COBURN v. HARDWICK.

Negligence—Playing Dangerous Game on Public Highway—Permitting Infant of Tender Years to Engage—Injury to Infant—Liability of Person Directly Causing the Injury—Contributory Negligence.

Action on behalf of Alexander Coburn (an infant of tender years, residing with his father at Falls View, in the township of Stamford), by his father and next friend, to recover \$1,000 damages for personal injuries received by reason of the defendant, a wholesale coal merchant residing at the town of Niagara Falls, throwing a large iron ball which struck plaintiff on the right hand, lacerating the flesh and breaking a finger bone.

G. Lynch-Staunton, K.C., and F. W. Griffiths, Niagara Falls, for plaintiff.

T. D. Cowper, K.C., for defendant.

FALCONBRIDGE, C.J.—Two or three acquaintances of defendant were amusing themselves one afternoon in June last, by standing on the sidewalk on a public street in the village of Niagara Falls, and throwing or “putting” an iron ball or shot weighing about 23 pounds, across the road. They were able to “put” the ball some 30 odd feet before it would reach the ground; then the ball would naturally continue its course across the remainder of the street and the boulevard and sidewalk. There was no sharp or perpendicular kerb at the boulevard, but only a gentle rise of ground from the travelled highway to the further limit of the street, which was about 60 feet wide. The plaintiff was one of the usual attendant crowd of small boys, of whom there were eight or ten present, and these boys, as soon as the ball would strike the ground, would run to field or stop it, and bring it back to the men. The defendant came along and engaged in the pastime, putting or throwing two or three balls, the last of which, while the plaintiff was endeavouring to stop it, crushed and lacerated his