

The appeal was heard by ARMOUR, C.J.O., OSLER, MACLENNAN, MOSS, and LISTER, J.J.A. MR. JUSTICE LISTER died while the case was under consideration. A majority of the remaining members of the Court agreed upon a judgment varying that of the trial Judge by limiting the plaintiffs' recovery to damages suffered by reason of the delay up to the time that the defendants had placed the cars in such a position that the plaintiffs could take their goods.

*Wallace Nesbitt*, K.C., and *H. E. Rose*, for the appellants. *G. F. Shepley*, K.C., and *J. Baird*, for the plaintiffs.

[April 11.]

TOWN OF WHITBY v. GRAND TRUNK R. W. CO.

*Railways—Statutory obligation—Enforcement by municipality—Prohibition against removal of "workshops"—Breach—Damages.*

Upon a motion made by the plaintiffs, pursuant to leave given in the judgment reported in 1 O.L.R. 480, for leave to amend by claiming a remedy against the defendants by virtue of the prohibition contained in s. 37 of 45 Vict., c. 67 (O.), providing that "the workshops now existing at the town of Whitby, on the Whitby section, shall not be removed by the consolidated company (the Midland Railway Company of Canada) without the consent of the council of the corporation of the said town."

*Held*, that this section imposed an obligation upon the Midland Railway Company of Canada for the benefit of the plaintiffs, who were entitled to maintain an action thereon in their own name: and by virtue of 56 Vict., c. 47 (D.), amalgamating the Midland Company with the defendants, and cl. 3 of the agreement in the schedule to that Act, the plaintiffs could maintain an action against the defendants for damages for any breach of the obligation committed by the Midland Company before the amalgamation, or by the defendants since the amalgamation; and the plaintiffs should be allowed to amend, and to have judgment for such damages as they were entitled to.

*Held*, also, that "the workshops now existing" meant the buildings used as workshops: and damages could not be assessed on the basis of the prohibition being against the shutting down of or reducing the extent of the work carried on in the workshops.

*Aylesworth*, K.C., and *Farewell*, K.C., for the plaintiffs. *Cassels*, K.C., for the defendants.