

bringing another action against him, based upon a contract by him to pay the commission in the event of a sale being made within 90 days.

The appeal should be allowed, the verdict against the appellant set aside, judgment entered dismissing the action against him with costs here and below; and the cross-appeal should be dismissed, but without costs.

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FIRST DIVISIONAL COURT.

APRIL 23RD, 1918.

\*ARMSTRONG CARTAGE AND WAREHOUSE CO. v.  
GRAND TRUNK R.W. CO.

*Railway—Highway Crossing—Negligence of Gateman—Injury to Vehicle Attempting to Cross Tracks—Evidence—Findings of Jury—Contributory Negligence.*

Appeal by the defendant company from the judgment of FALCONBRIDGE, C.J.K.B., on the findings of a jury, at the trial at Hamilton, in favour of the plaintiff company, in an action for damages for injuries caused to a motor-truck of the plaintiff company, and the goods it was carrying, owing, it was alleged, to the negligence of the appellant company.

The motor-truck was injured by being struck by an east-bound train of the defendant company while the truck was being driven across the tracks of the railway lines laid upon Lottridge street, in the city of Hamilton.

The defendant company had, under the authority of the Board of Railway Commissioners for Canada, erected gates on the north and south sides of the lines on Lottridge street; and it was not disputed that it was the duty of the defendant company to keep these gates closed when there was danger to persons crossing the tracks from an approaching train; and it was not open to question that, when the gates are not down, the travelling public is told that the tracks may be safely crossed.

The truck was being driven by one Ince, and was proceeding, heavily laden, southward on Lottridge street.

The relevant questions put to the jury and the answers to them were as follows:—

“(1) Was the injury to the plaintiff's motor-truck caused by any negligence of the defendant? A. Yes.

“(2) If so, wherein did such negligence consist? A. By not having the north gate lowered soon enough.