

contract for the sale of the mill. The judgment appealed from should be set aside, so far as it declared that the execution upon the judgments for the instalments on the mill should be withdrawn. The plaintiff should have his costs of the interpleader issue. In all other respects the judgment should be affirmed; and the defendants should have the costs of the appeal.

HODGINS, J.A., and KELLY, J., were of opinion, for reasons stated by each in writing, that the judgment of MIDDLETON, J., was right, and that the appeal and cross-appeal should be dismissed, both with costs.

The Court being divided upon the plaintiff's appeal, it was dismissed with costs; the defendants' cross-appeal was also dismissed with costs.

APRIL 19TH, 1915.

MITCHELL v. GRAND TRUNK R.W. CO.

*Railway—Level Highway Crossing—Person Crossing Track in Sleigh Killed by Train Moving Reversely—Negligence—Contributory Negligence—Findings of Jury—Dominion Railway Act, sec. 276—Appliances for Warning Persons about to Cross—Incompetent Flagman—Damages.*

Appeal by the defendants from the judgment of MULOCK, C.J.Ex., ante 78.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

S. F. Washington, K.C., for the appellants.  
T. J. Agar, for the plaintiff, respondent.

The judgment of the Court was delivered by FALCONBRIDGE, C.J.K.B.:—1. There is evidence to support the findings of the jury.

2. The jury's answers to the questions, as amplified and explained by them orally, warrant and justify the entry of judgment for the plaintiff.

3. The damages (\$1,000), although perhaps larger in amount than some of us would have awarded, cannot be regarded as so excessive as to demand a new trial or putting the plaintiff to the alternative of a deduction.

*Appeal dismissed with costs.*