

SECOND DIVISIONAL COURT.

FEBRUARY 26TH, 1917.

*MINOR v. GRAND TRUNK R.W. Co.

Railway—Injury to Person and Vehicle Crossing Tracks at Highway Crossing—Negligence—Findings of Jury—Excessive Speed of Train—Other Grounds of Negligence Negatived—Powers of Parliament—Regulation of Speed of Trains—Railway Act, R.S.C. 1906 ch. 37, sec. 275—Part of Village not thickly Peopled—Fencing—Immateriality.

Appeal by the defendants from the judgment of BRITTON, J., ante 164.

The appeal was heard by RIDDELL and LENNOX, JJ., FERGU-SON, J.A., and ROSE, J.

D. L. McCarthy, K.C., for the appellants.

W. M. German, K.C., for the plaintiff, respondent.

RIDDELL, J., reading the judgment of the Court, said that the plaintiff was driving his motor-truck across the railway tracks in the village of Port Colborne, when the truck was struck by the engine of a train and destroyed, and the plaintiff was injured. In the statement of claim, negligence was charged as follows: (1) the train was running at a much higher rate of speed than is allowed by the statute; (2) failure and neglect to blow a whistle or ring a bell. The jury found negligence, in that the train was running at too high a rate of speed at the time of the accident; no contributory negligence; damages, \$1,000.

It must be taken that the jury had negatived all negligence charged except excessive speed.

The trial Judge charged the jury that the defendants were limited by the law to a speed of ten miles an hour; and it must be considered that the jury had found that that rate had been exceeded.

It was admitted on all hands that the Parliament of Canada has power to regulate the speed of trains—and a train cannot be said to be negligently or improperly run in respect of speed unless it is transgressing the statute.

The Railway Act, R.S.C. 1906 ch. 37, sec. 275, provides: "No train shall pass in or through any thickly peopled portion of any city, town, or village at a rate greater than ten miles an hour, unless the track is fenced or properly protected in the