

THE
ONTARIO WEEKLY REPORTER

(TO AND INCLUDING JANUARY 27TH, 1906.)

VOL. VII. TORONTO, FEBRUARY 1, 1906. No. 3

NOVEMBER 6TH, 1901.

C.A.

OATMAN v. MICHIGAN CENTRAL R. W. CO.

*Railway—Fire from Engine—Negligence — Spark-arrester—
Neglect to Adopt Latest Safety Devices—Conflict of Ex-
pert Evidence—Question for Jury.*

This case was before the Court of Appeal on a former occasion, on appeal from the judgment at the first trial, 1 O. L. R. 145. A new trial was then ordered, which took place before MEREDITH, C.J., and a jury. Upon the answers of the latter to the questions submitted to them judgment was directed for plaintiff, and defendants again appealed.

I. F. Hellmuth, K.C., and D. W. Saunders, for appellants.
Charles Millar, for plaintiff.

The judgment of the Court (OSLER, MACLENNAN, MOSS, and LISTER, JJ.A.), was delivered by

OSLER, J.A. :—The sole ground of negligence relied upon at the trial and on the appeal was, that defendants' engine was fitted with the stack known as the diamond stack, instead of with an improved modern stack, known as the straight stack. It was contended that the former was more dangerous as a fire-thrower than the latter, and that in May, 1897, when the fire occurred which destroyed plaintiff's property, the straight stack had come into such general use, and its superiority to the diamond as a safeguard against danger from fire had become so generally recognized, that defendants were negligent in not having adopted it.