

another and to the plaintiff's waggon, occasioned by the negligence of the defendants' servants in the operation of one of their street cars.

The plaintiff while driving south on McDougall street in the city of Windsor, and crossing the track of the defendants' railway upon Wyandotte street, at the intersection of the two streets, was struck by a car proceeding east with result above stated.

The jury found that the injuries were caused by the defendants negligence, that the negligence was in the motorman not having his car under control; that the plaintiff took reasonable care in approaching and endeavouring to cross the track; that the plaintiff took reasonable care to save himself from injury; that the motorman had time to avoid the collision after he became aware that the plaintiff intended to cross the track, that the plaintiff had not time to turn away from the track or to stop the team after he had an opportunity of seeing the coming car; and that the defendants were to blame for the accident, and they assessed the damages at \$1,910. No complaint was made as to the amount of damages.

The appeal to Court of Appeal was heard by HON. SIR CHAS. MOSS, C.J.O., HON. MR. JUSTICE GARROW, HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MEREDITH and HON. MR. JUSTICE MAGEE.

D. L. McCarthy, K.C., and W. G. Bartlett, for the defendants.

J. H. Rodd, for the plaintiff.

HON. SIR CHARLES MOSS, C.J.O.:—If the evidence warrants these findings the judgment should stand beyond question.

The case was submitted to the jury in a charge to which no exception was taken directing the jury's attention specially in a manner quite favourable to the defendants, to the plaintiff's conduct as detailed in the testimony in approaching the crossing and in looking out for cars coming either way upon the track, and as to the duties and responsibility of the motorman in nearing a crossing.

There was a conflict of evidence as to whether the gong was sounded, but the jury have not found against the defendants in that respect.