

# The Ontario Weekly Notes

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No. 9.

## COURT OF APPEAL.

NOVEMBER 12TH, 1910.

\*LONDON AND WESTERN TRUSTS CO. v. GRAND TRUNK  
R. W. CO.

*Fatal Accidents Act—Death of Fireman on Railway—Action on Behalf of Parents — Reasonable Expectation of Pecuniary Benefit—Evidence for Jury—Quantum of Damages—Workmen's Compensation for Injuries Act—Excessive Amount Found by Jury—Duty of Appellate Court—New Assessment Directed unless Smaller Amount Agreed upon.*

Appeal by the defendants from the judgment of MAGEE, J., at the trial, in favour of the plaintiffs, upon the findings of a jury.

The action was brought by the plaintiff, as administrator of the estate of the late Cecil Burchell, to recover damages, under the provisions of R. S. O. 1897 ch. 166, for the death of Cecil Burchell through the negligence of the defendants, in whose employment he was at the time of his death, as the fireman of a locomotive engine.

The injury was the result of a collision, caused, as the defendants admitted, by the negligence of their servants, and the claim was made and the assessment of damages was based upon the principle of the Workmen's Compensation for Injuries Act.

The jury found that the estimated earnings of a person in the same grade as the deceased in the like employment in this province, for the three years allowed by the statute, would be \$1,800, and they assessed the damages at that sum, apportioned between the father and the mother at the sums of \$600 and \$1,200 respectively.

\* This case will be reported in the Ontario Law Reports.