

purchase or rent school sites or premises and to build, repair, furnish and keep them in order. A boy, aged ten, standing on a platform in front of the schoolhouse in question, was amusing himself during the noon-hour, and when dodging a snow-ball fell off the platform a distance of about 3 feet and broke his leg. The platform was in front of the school house extending its entire width, except on the west side, where it fell short by the width of one plank, which was missing.

Held, 1. The platform was not in such a state of repair and good order as it was the duty of the school board to keep it.

2. The doctrine of contributory negligence is not to be applied to a child of tender years; or, at most, only such reasonable care as ought to be expected from one of his years is required of him, and that boy was not of the age or understanding sufficient to guard himself against the danger, and the doctrine of contributory negligence had no application in this case.

3. The fact that the platform had been unguarded on the side in question for 25 years, and that the missing plank had been gone for 4 or 5 years and that no accident had occurred there before afforded no better defence to the action than did the fact or probability that there are many school platforms in a like condition throughout the country.

The defendants were therefore held liable for the injuries suffered by the plaintiff.

Thompson, K.C., for plaintiff. *Makins*, for defendants.

Province of Manitoba.

COURT OF APPEAL.

Richards, J.A.]

[July 23.]

EMPEROR OF RUSSIA v. PROSKOURIAKOFF.

*Appeal to Supreme Court—Consolidating two appeals in one—
Supreme Court Act, s. 73, rules 8 and 14.*

In this case an order was made consolidating two appeals to the Supreme Court of Canada from the judgment of the Court of Appeal for Manitoba, pronounced on June 8, 1908, reported ante, p. 506 and in 18 M.R. 56, and giving the plaintiff leave to print one appeal case for the Supreme Court, and directing