

seems an extraordinary finding that when asked as to contributory negligence they say there was no contributory negligence, in effect, because the boy was running so fast and crossing the street; the very thing that probably would be thought to amount to negligence is that which, according to the jury, excuses the negligence.

Then it is said that the principle of *Lynch v. Nurdin*, 1 Q. B. 29, applies, and that the boy is of such tender years that negligence is not to be attributed to him. That case has no further application than this: that where the child is of such tender years as not to appreciate the danger of what he does, contributory negligence cannot be attributed to him. That is the full extent of the doctrine of that case, and the cases that follow it. In this case, I do not think that *Lynch v. Nurdin* applies, because the boy was not of that type; he was a bright, intelligent boy, and it is not age but intelligence that is the test in applying the principle of that case.

I think the appeal must be allowed, and judgment must be entered dismissing the action.

BRITTON, J.

MAY 18TH, 1907.

WEEKLY COURT.

CRAIG v. KINCH.

*Receiver—Action Brought by Receiver in his own Name—
Seizure of Property in Hands of Receiver—Injunction—
Damages—Bank—Lien—Timber—Bank Act—Practice—
Costs.*

Motion by plaintiff to continue an injunction, and motion by defendants the Quebec Bank to validate a seizure made by them.

C. A. Masten and R. B. Henderson, for plaintiff.

D. T. Symons, for defendants the Quebec Bank.

BRITTON, J.:—By consent of parties the motion to continue injunction was to be treated as a motion for judgment.

The seizure by the Quebec Bank as against the receiver in possession of property claimed by the bank ought not to have been made. The rights of the bank were protected