

IDINGTON, J., dissented, holding that the judgment should be reduced to \$100, the amount tendered by defendants before action and paid into Court, and that plaintiff should pay defendants their costs of the action and appeal.

TEETZEL, J.

MARCH 14TH, 1905.

TRIAL.

GEIGER v. GRAND TRUNK R. W. CO.

Damages—Remoteness—Negligence—Nervous Shock—Impact without Outward Injury—Railway—Findings of Jury.

Action for damages for negligence. On 21st July, 1904, plaintiffs (husband and wife) were being driven in an enclosed omnibus from a wharf in the city of Toronto, and when crossing the tracks running along the Esplanade, at Yonge street, the omnibus was caught between the two parts of a freight train of defendants, which had been parted at Yonge street, and which was about to be coupled, when the driver of the omnibus was caught between the two sections of the train, and while considerable damage was done to the omnibus, neither of the plaintiffs suffered visible bodily injury, beyond a few slight bruises, but both complained of serious injury to their nervous systems as a result of fright.

The questions submitted to the jury and their answers were as follows:

1. Were defendants, through their employees, guilty of negligence? A.—Yes.

2. If yes, in what did such negligence consist? A.—In not giving proper or sufficient warning that the cut or opening in the train was for the use of the general public.

3. If you find defendants guilty of negligence, did such negligence cause the injury to plaintiffs? A.—Yes.

4. Is the injury of which plaintiff Christian Geiger complains wholly due to mental shock, or is it attributable partly to mental shock and partly to shock caused by the blow? A.—Mental shock only.

5. At what sum do you assess the damages to plaintiff Christian Geiger, (a) in respect of personal injury resulting exclusively from mental shock? A.—\$700. (b) In respect of shock caused by blows? No answer.

The like questions were put with regard to plaintiff Emma Marie Geiger, and were answered in the same way, except that her damages were assessed at \$300.

E. E. A. DuVernet and W. M. Boulton, for plaintiffs.

W. R. Riddell, K.C., for defendants.