

Hunter v. Daniel, 4 Hare 433; McSweeney v. Kay, 15 Gr. 432; Cudney v. Gives, 20 O. R. 500.

There is no suggestion of bad faith on the part of the defendants the purchasers. The evidence shews that, in addition to the large expenditure which they had made, the notary actually had with him the \$37,500 ready to pay over. And it was not paid over simply because of the plaintiffs' conduct to which I have referred, which, in my opinion, amounted to a waiver of strict payment or tender within the time limited by the agreement.

The appeal should be dismissed with costs.

MACLAREN, J.A., agreed that the appeal should be dismissed with costs.

The Court being evenly divided, the appeal was dismissed with costs.

JUNE 15TH, 1910.

MACKISON v. GRAND TRUNK R. W. CO.

Railway—Injury to Person Crossing Track—Negligence—Evidence—Lowering of Gates—Conflict—Findings of Jury—Damages—Quantum.

Appeal by the defendants from the judgment entered at the trial by MEREDITH, C.J.C.P., upon the answers of the jury to questions submitted to them, awarding the plaintiff \$2,500 damages.

The action was to recover damages for injuries suffered by the plaintiff, a lad under 21, through coming into collision with a locomotive engine belonging to the defendants at a level crossing upon Wellington street in the city of London.

For protection at the crossing the defendants had established and maintained gates with a watchman in charge. The crossing was in the vicinity of the defendant's yard at London, where there was a considerable shunting of cars going on. The gates consisted of long poles, one on each side of the street, worked by the watchman. The poles when lowered met in the centre of the street, and were intended to arrest all traffic, vehicular and pedestrian, across the railway, while engines and cars were crossing the street. When raised, they stood at an acute angle above the roadway, and when in this position indicated that the street was open to traffic across the railway. In consequence of the frequency of shunting at the point, the gates were being constantly lowered and raised.