

The Ontario Weekly Notes

VOL. XVIII. TORONTO, MAY 14, 1920.

No. 9

APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

MAY 4TH, 1920.

*WALKER v. GRAND TRUNK R. W. CO.

Railway—Highway Crossing—Engine Striking Motor-car Attempting to Cross Tracks—Injury to and Death of Occupants of Car—Actions for Damages—Negligence—Evidence—Excessive Speed of Train—Signal to “Slow down”—Duty of Engine-driver—Duty of Brakesman of Shunting Train—Findings of Trial Judge—Appeal.

Appeals by the plaintiffs in the above and four other actions, brought by the different plaintiffs against the railway company, from the judgment of ROSE, J., at the trial (without a jury) in Toronto, dismissing the actions.

The actions were all based on the alleged negligence of the defendants, resulting in an accident on the 11th August, 1917, at a railway crossing near the town of Bowmanville, in which the driver of a motor-car and four of the other five occupants were killed and the fifth injured.

The Walker action was brought by the surviving husband of one of the deceased, he himself being the only one who was not killed, to recover damages, under the Fatal Accidents Act, R.S.O. 1914 ch. 151, for the death of his wife, and damages for his own personal injuries. The other actions were brought, under the Act, in one case by the mother and in the other cases by the widows and children of the other deceased persons.

The appeals were heard by MULOCK, C.J. Ex., CLUTE, RIDDELL, SUTHERLAND, and MASTEN, JJ.

J. R. Roaf, for the appellants.

I. F. Hellmuth, K.C., and W. A. Foster, for the defendants, respondents.

* This case and all others so marked to be reported in the Ontario Law Reports.