

most substantial part of the improvements was made after the son realised that he had no agreement binding on his father, and had learned and come to the conclusion that his father would not make a deed to him, and the only way he could acquire ownership was through possession for a sufficient length of time: *Orr v. Orr* (1874), 21 Gr. 397; *Smith v. Smith* (1898), 29 O.R. 309.

There should be judgment for the plaintiffs and the infant defendant against the defendant Zenas Gallinger for possession of the 50 acres and for costs of the action, and dismissing his counterclaim with costs, including in each case the costs of the Official Guardian.

ORDE, J.

MARCH 16TH, 1920.

*WHITTEN v. BURTWELL.

Negligence—Highway Accident—Child Injured by Motor-car—Excessive Speed—Want of Care—Motor Vehicles Act, sec. 23—Onus—Disproof of Negligence—Failure to Satisfy—Conditions of Traffic—Duty of Driver—Responsibility of Owner of Vehicle—Finding of Trial Judge—Damages—Permanent Injury—Expenses Incurred by Parent.

Action by Louise Whitten, a child of 6 years, by her mother and next friend, and by the mother, to recover damages for injury sustained by the child and expense occasioned to the mother by the running down of the child by the motor-car of the defendant.

The action was tried without a jury at St. Catharines.

T. M. McCarron, for the plaintiffs.

E. A. Lancaster, for the defendant.

ORDE, J., in a written judgment, said that the accident occurred on the 31st May, 1919, which was a Saturday and a public school holiday. The infant plaintiff went into the street in front of her mother's house to play, and was in the roadway when she was struck by the defendant's car, which was being driven by his son Harry, a boy of 16, who had a driver's license, and was in the habit of driving the car; the child was seriously, probably permanently, injured.

The statements of the different witnesses of the accident varied, as might be expected. [The learned Judge reviewed the evidence.]

It was admitted that Harry Burtwell was driving the car as the defendant's servant or agent.