

ROSE, J.

JANUARY 7TH, 1921.

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

Negligence—Injury to Boy of 8 Years Trespassing in Railway-yard—Findings of Jury—Contributory Negligence—Direction to Jury—Reasonable Care to be Expected from Boy, Having Regard to Age and General Intelligence—Whether Contributory Negligence Attributable to Child a Question for Jury.

Action for damages for personal injuries to the plaintiff Stewart Downing, a boy of 8 years, suing by his father as next friend, and for expenses incurred by his father and co-plaintiff in the action, in consequence of the injury to the boy, the plaintiffs charging negligence on the part of the defendants.

The action was tried with a jury at a Toronto sittings.

J. W. Curry, K.C., for the plaintiffs.

D. L. McCarthy, K. C., for the defendants.

ROSE, J., in a written judgment, said that the boy was upon the defendants' property and attempted to cross a track by crawling between two cars standing thereon, beneath the couplings connecting the cars, when the cars were moved by an engine, and a wheel or some wheels went over his leg.

At the close of the plaintiffs' case, counsel for the defendants moved for a nonsuit. Judgment upon the motion was reserved, the defendants gave evidence, and questions were submitted to and answered by the jury.

The jury found: (1) that the boy was on the defendants' line with the knowledge of the defendants; (2) that children were in the habit of being upon the line at the place in question, to the knowledge of the defendants; (3) that the defendants objected to their being there, and tried to prevent it; (4) that the boy did not know that he ought not to be on the tracks; (5) that the defendants were guilty of a breach of their statutory duty to erect and maintain fences; (6) that the injury suffered by Stewart Downing was a result of such breach; (7) that the injury was caused by the negligence of the defendants; (8) that the negligence consisted in (a) not maintaining a fence and (b) not ordering the boy off the property; (9) that the boy was guilty of negligence causing or contributing to the casualty; (10) that his negligence was (a) in crawling under the cars" and (b) "the boy should have observed the engine."

The finding that the boy was negligent seemed to the learned Judge to render it unnecessary to decide whether effect ought to be