

## HIGH COURT DIVISION.

KELLY, J.

JUNE 4TH, 1920.

## BOGLE v. CANADIAN PACIFIC R.W. CO.

*Railway—Motor-truck Struck by Train at Level Highway Crossing  
—Negligence—Evidence—View Obstructed by Box-cars on  
Siding—Finding of Jury—Nonsuit.*

Action for damages for personal injuries sustained by the plaintiff and injury to his motor-truck and goods by reason of the negligence of the defendants, as the plaintiff alleged.

The action was tried with a jury at Hamilton.

M. J. O'Reilly, K.C., for the plaintiff.

Angus MacMurchy, K.C., and J. Q. Maunsell, for the defendants.

KELLY, J., in a written judgment, said that the plaintiff alleged several acts of negligence against the defendants. The jury's only finding of negligence was "the position of the box-cars on the siding at time of accident."

The accident happened on the morning of the 19th November, 1918, at a level crossing on the defendants' railway line. For several hundred feet extending westerly from this crossing, the railway tracks and the highway (the highway being to the south of the tracks) run approximately parallel, but converging as they proceed easterly towards the crossing, nearing which the highway takes a turn to the north and crosses the railway tracks. At the point of crossing there are two lines of tracks. At a little more than 100 feet to the west of the intersection of the rails with the travelled part of the highway, an additional pair of tracks (a siding) turns from the southerly of the two main lines of tracks and runs thence westerly parallel to the main tracks. At the time of the accident there were standing on this siding box-cars which, the plaintiff alleged, obstructed his view of the approaching train, and there was on the siding a stop-block approximately 287 feet to the west of the place where the accident happened. The easterly end of the most easterly of the box-cars referred to was from 24 to 30 feet to the west of the stop-block.

The plaintiff was familiar with this crossing and the road leading to it. He says he went that way once a week. On the morning of the 19th November, he was driving his motor-truck, in which he was taking goods from his store to the brickyards,