

Plaintiff's servant was not looking out for an engine or train; the persons on the engine had whistled and sounded the bell a short time before the collision, but had not done so for a time which they variously estimated at from a minute and a half to 4 minutes before the collision. The siding was used by defendants only two or three times a week. The way was used by the public constantly, and a sidewalk was built upon it. The Judge below found that the way was a public highway; that defendants had been guilty of negligence in not taking proper precautions; and that plaintiff's servant had not been guilty of contributory negligence: and he assessed the damages at \$175.

The appeal was heard by FALCONBRIDGE, C.J., STREET, J., BRITTON, J.

W. H. Blake, K.C., for defendants.

A. W. Marquis, St. Catharines, for plaintiff.

STREET, J.—The evidence seems to establish that the road or way upon which plaintiff's servant was driving his horse at the time of the accident was a "highway" within the meaning of sec. 3 (g) of the Railway Act of 1888.

The point at which this highway emerges from the archway and strikes the siding, is so close to the rails, and the view of the track on each side is so completely obstructed until the traveller approaching it has almost put his foot on the nearest rail, that the crossing is an unusually dangerous one. The question then arises whether defendants took reasonable and proper precautions to guard against accidents, considering the dangerous character of the place in question. It is admitted that the precautions of ringing the engine bell and blowing the whistle, required by sec. 256 of the Railway Act of 1888, were not taken; but defendants dispute the application of that section to the case of an engine shunting cars in the railway yard, as this one was doing. I do not think it is necessary to determine that question here. The cases seem to have established that, apart from that section and in cases in which it is not applicable, a duty is cast upon the defendants to take reasonable precautions at dangerous points for the avoidance of accidents. Here there seems to have been an entire absence of any precaution. The engine left the point at which it had discharged its cars, that point being from 90 to 100 feet away, and proceeded slowly along and past the highway in question without giving any warning whatever of its approach. In my opinion there was therefore evidence