

MIDDLETON, J.

OCTOBER 20TH, 1915.

GRAY v. WABASH R.R. CO.

Railway—Injury to Persons Crossing Track by Passing Train—Negligence—Findings of Jury—Failure to Ring Bell and Blow Whistle—Negligence not Connected with Injury—Negligence of Persons Injured in Attempting to Cross without Looking.

Action to recover damages for injuries sustained by the plaintiffs by being struck by a train of the Wabash Railroad Company operated upon the line of the Grand Trunk Railway Company, while the plaintiffs were attempting to cross the line in a buggy. The action was against both companies.

The action was tried with a jury at Sandwich.

J. H. Rodd, for the plaintiffs.

H. E. Rose, K.C., for the defendants the Wabash Railroad Company.

D. L. McCarthy, K.C., for the defendants the Grand Trunk Railway Company.

MIDDLETON, J., said that, upon the answers of the jury, there must be a verdict in favour of the Grand Trunk Railway Company, for no negligence had been found against it.

The action arose out of a collision between a Wabash train and a horse driven by the plaintiffs along the Tecumseh road, which runs almost parallel with the railway, but crosses it at the point where the collision occurred; a short distance east of a railway station. The train came from the west. The plaintiffs were also driving from the west; then they turned north-east to cross the track. They had first to cross over a siding some 40 feet south of the track. Upon this siding were some box-cars, which obstructed the view westerly. The station building also obstructed the westerly view; but, after the siding had been crossed and before the plaintiffs had reached the main track, they had a clear view westerly of 550 feet. They said that they looked westerly and saw no train. There was no reason why the train could not have been seen; because, although snow was falling, the occupants of the dwelling on the other side of the Tecumseh road saw the train and realised the peril in which the plaintiffs were. Manifestly, if the plaintiffs had looked, as they said they did, they must have seen the