without apparent authority, were certainly bound to exercise a very high degree of care, even if no greater legal responsibility attached by reason of the alleged unauthorized use of the highway; that the negligent and illegal conduct of the defendants was the direct and proximate cause of the plaintiff's injury; that plaintiff had not been guilty of negligence; and that, even if he had, the defendants could in the result, by the exercise of ordinary care and diligence, by having the car under control, have avoided the accident.

W. Nesbitt, K.C., and H. E. Rose, for appellants.

E. F. B. Johnston, K.C., for plaintiff.

ARMOUR, C.J.O.—I do not think that the conclusions arrived at by the Chief Justice depend at all upon the question whether or not all of the eight tracks of the defendants' railway crossing the main street of the town, along which the plaintiff was lawfully walking when he was injured by the cars of the defendants, were lawfully upon the street, for his conclusions are supported by the evidence, assuming that they were there lawfully. The care that the defendants were bound to take in maintaining all these tracks across the main street, and running and shunting their cars upon them, was a care commensurate with the danger occasioned thereby to those passing along the street, and such care, the Chief Justice rightly held, the defendants did not take. Under the circumstances the plaintiff was not guilty of negligence.

OSLER, J.A.—The plaintiff was rightfully passing along the highway, and in doing so attempting to pass over the eight lines of track. I do not assent to the view that these tracks were wrongfully there, or laid down without authority, but it is not necessary to determine that, if it has not been already decided. But, even though they were lawfully there, the public had the right to cross them in going about their lawful business . . . and it was incumbent on defendants—so at least a Judge and jury might find—to take special precautions against running into persons passing over the tracks, more particularly when the work of shunting cars was going on, an operation which, from the comparative slowness and quietness with which it is done, does not convey to persons on or near the tracks the same warning which a large train in motion would do. It appears to me that when the plaintiff was seen by the person in charge of the car which hurt him, while some 200 feet away, and standing still, apparently unconscious of the approach of