

DECEMBER 15TH, 1906.

DIVISIONAL COURT.

BURTCH v. CANADIAN PACIFIC R. W. CO.

Negligence—Railway—Hand-car—Injury to Child Playing in Street at Level Crossing—By-law of Municipality—Contributory Negligence—Findings of Jury—Duty to Give Warning of Approach of Hand-car—Damages.

Appeal by defendants from judgment of ANGLIN, J., upon the findings of a jury, in favour of plaintiff, a boy of ten, for the recovery of \$1,000 damages in an action for personal injuries sustained by plaintiff by reason, as alleged, of the negligence of defendants.

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

H. S. Osler, K.C., for defendants.

W. J. L. McKay, Orangeville, for plaintiff.

CLUTE, J.:—Defendants' railway passes through the town of Orangeville, crossing John street. Plaintiff on 29th September, 1905, while on an errand upon that street, and while passing the point where the railway crosses the same, was run down by a hand-car of defendants, then used by the employees of defendants, and seriously injured, owing, as it is alleged, to the negligence of defendants.

The evidence shewed that plaintiff had stopped on the road to play with other boys, after having delivered certain parcels with which he was sent, and that he was coasting down the incline of John street, in his little express waggon, when the accident occurred. He was sitting in front, steering the waggon, and another boy was behind, facing the opposite direction.

Questions were submitted to the jury and answered as follows:—

1. Were defendants guilty of any negligence which caused the injuries sustained by plaintiff? A. Yes.

2. If so, in what did such negligence consist? A. The negligence consisted of having a close board fence along the west side of street running south from the railway to south of railway limit, also the bank running west along the south side of track, also shrubbery and weeds growing along the wire fence. We consider it negligent in not giv-