

MACMAHON, J., found that the car was running at an excessive speed, at least 15 miles an hour; that the bell was not rung, and therefore the attention of the boy was not drawn to the coming of the car; that the boy fell on the street by reason of its being out of repair and in a dangerous condition; and that, had he not fallen, he could have crossed with safety before the car reached him; that, although he fell, he could have regained his feet in time to cross in safety, had it not been for the excessive rate of speed; and that, had it not been for the stones piled on the road, the fender would have worked properly and saved the boy. It was held, therefore, that the cause of the injury to the boy was the negligence of the defendant railway company. The boy in not looking was not guilty of any negligence which contributed to the accident, as, even if he had looked and had seen the car coming, he could have crossed without injury had he not fallen. *Brown v. London Street R. W. Co.*, 2 O. L. R. 53, 31 S. C. R. 642, *Danger v. London Street R. W. Co.*, 30 O. R. 493, *O'Hearn v. Port Arthur*, 4 O. L. R. 209, distinguished.

Judgment for plaintiff against the company for \$2,500 with costs. As against the city corporation, action dismissed without costs.

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JUNE 1ST, 1903.

DIVISIONAL COURT.

SMITH v. BLOOMFIELD.

*Master and Servant—Wrongful Dismissal of Servant—Existence of Contract of Hiring—Question for Jury—Excessive Damages—Absence of Direction—County Court Action—Appeal—New Trial not Moved for.*

Appeal by defendants from judgment of County Court of Hastings in favour of plaintiff for \$110, being the amount of a verdict found in his favour by a jury.

The action was brought for wrongful dismissal of plaintiff. He alleged that he had been hired by defendants to work on the steamer "Caspian" and had gone on the vessel at Belleville at about midnight between the 8th and 9th July, 1902, and that between two and three o'clock in the morning of the 9th July he had been discharged without any cause, and was put ashore on the bank of the Murray canal 15 miles from home, without money, and that he had been obliged to walk back to Belleville, and became ill in consequence. Defendants denied all plaintiff's statements.