

The action was brought by Arthur Ewing, an infant, by his father and next friend, Richard G. Ewing, and the said Richard G. Ewing, as plaintiffs, to recover damages for injuries sustained in consequence of the infant plaintiff coming into contact with an electric car in use upon the defendants' railway.

The acts of negligence alleged in the statement of claim were: driving the car recklessly and at excessive speed; lack of proper control and of proper precautions (no particulars); speed not slackened; and no warning of approach.

The jury, in answer to questions, found the defendants guilty of negligence, consisting in the motorman failing to observe the child in time to stop the car; no contributory negligence; and assessed the damages at \$2,500—\$2,000 to the infant and \$500 to the father.

At the time of the accident, the car was proceeding westerly along Arthur street, about 11 a.m. of the 14th November, 1908. The width of the street from kerb to kerb was 40 feet. There were two rail tracks which occupied 14 feet of the centre, leaving from each kerb to the nearest rail about 13 feet.

The adult plaintiff resided on the south side of Arthur street, about 150 feet west of Shaw street, which crosses Arthur street, and from his house the child had escaped and gone upon the street. The child's age was two years and seven months.

The only eye-witness to the accident called by the plaintiffs was Mrs. Mary Hare, who said she was returning from the market and was a passenger on the car in question, which she left by the front exit, at the east side of Shaw street; and, when she alighted, she saw the child on the south side of the tracks. She was asked: "Q. And which way was the child going? A. Well, it looked to me as if it was crossing the street . . . to the north side of the street. Q. Then what happened? A. Well, of course, the car started on full speed. Q. It went full speed you say? A. Yes. Q. The car started at full speed, and what happened? A. Well, the next thing I seen, the car was over the child, before I got over to the corner of the street." She further said that she did not hear the gong sounded, and she knew of no reason why the motorman should not have seen the child.

For the defence several witnesses were called, who said that the car was going at a moderate speed and that the gong was sounded and the brakes applied. Some of them said that the child ran into the car.