

Wigram, V.-C., said in the case in Hare: "If there is a gift to a person . . . on the happening of any event . . . or a direction to pay and divide when a person attains 21 . . . there is no gift . . . except in the direction to pay, and the person to take must come within the particular description. But if, upon the whole will, it appears that the future gift is only postponed to let in some other interest, or, as the Court has commonly expressed it, for the benefit of the estate, the same reasoning has never been applied to the case. The interest is vested notwithstanding, although the enjoyment is postponed."

Costs from estate.

MULOCK, C.J.Ex.

MARCH 11TH, 1915.

MITCHELL v. GRAND TRUNK R.W. CO.

Railway—Level Highway Crossing—Injury to and Death of Person Crossing Track in Sleigh—Train Moving Reversely—Negligence of Servants of Railway Company—Contributory Negligence of Driver of Sleigh—Findings of Jury—Dominion Railway Act, sec. 276—Appliances for Warning Persons about to Cross Track—Incompetent Flagman.

Action under the Fatal Accidents Act, brought by Charles E. Mitchell, father of Leo Curran Mitchell, who was killed by a train of the defendants, to recover damages for his death.

The action was tried with a jury at Simcoe.

T. J. Agar, for the plaintiff.

S. F. Washington, K.C., for the defendants.

MULOCK, C.J.Ex.:—On the morning of the 25th December, 1914, the deceased was proceeding westerly along Union street, in the town of Simcoe, in a cutter drawn by one horse. There were two other occupants of the cutter, namely, one Glenn, the driver (who had hired the horse and cutter), and one Snelgrove, who was sitting at the left side of the cutter with Glenn on his lap, the deceased being at his right. The defendant company's line of railway crosses Union street at rail level at right angles. A few hundred feet south of the intersection of the railway track and Union street is the company's station, and the train in question was standing there. It consisted of the engine, tender, baggage car, and passenger car, and backed northerly across