

McQuarrie v. Brand (1896), 28 O.R. 69, Ontario Ladies College v. Kendry (1905), 10 O.L.R. 324, and Commercial Bank of Windsor v. Morrison (1902), 32 Can. S. C.R. 98, distinguished.

There should be judgment for the amount of the notes with interest from the 12th May, 1919, and costs.

ORDE, J.

MAY 28TH, 1920.

*GRAY v. PETERBOROUGH RADIAL R.W. CO.

Negligence—Collision of Street-car and Motor-truck in Highway—Injury to Voluntary Passenger in Motor-truck—Finding of Jury—Negligence of Drivers of both Vehicles—Liability of Owner of Truck Driven by Employee but not Engaged in Owner's Business—Liability at Common Law—Motor Vehicles Act, sec. 19, as Amended—Violation of Provisions of Act—Voluntary Passenger not Identified with Driver.

Action by Claude Gray, an infant, by Joseph Gray, his father and next friend, and by Joseph Gray as a co-plaintiff, for damages arising from injuries caused to the infant plaintiff as the result of a collision between a street-car belonging to the defendant railway company and a motor-truck belonging to the defendants the Bonner-Worth Company Limited. The Hydro-Electric Power Commission of Peterborough were also made defendants by reason of their ownership or control of the defendant railway company.

The action was tried with a jury at Peterborough.

G. N. Gordon, for the plaintiffs.

Joseph Wearing, for the defendant railway company and the defendant Commission.

R. S. Robertson, for the defendants the Bonner-Worth Company Limited.

ORDE, J., in a written judgment, said that the jury found the driver of the street-car and the driver of the motor-truck guilty of negligence causing the accident, and assessed the damages at \$600 for the infant plaintiff and \$100 for the adult plaintiff.

At the conclusion of the plaintiffs' evidence, the defendants the Bonner-Worth Company moved for a nonsuit, on the ground that the evidence disclosed that the driver of the motor-truck was not, at the time of the accident, engaged upon his employer's business, and that the provisions of sec. 19 of the Motor Vehicles Act, R.S.O. 1914 ch. 207, as amended, did not apply, having regard to the facts and circumstances of the present case.