

caused his death) that he heard the train coming and did not stop or could not stop, and as a consequence ran into the train, there was nothing to leave to the jury, and the motion for a nonsuit should have prevailed.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, MEREDITH, J.J.A.

G. T. Blackstock, K.C., and Angus MacMurchy, for defendants.

M. J. O'Reilly, Hamilton, for plaintiff.

MEREDITH, J.A.:—As I view this case, there are now just 3 questions involved in it, namely: (1) whether there is any reasonable evidence to support the finding of the jury that the neglect to ring the bell and sound the whistle was the cause of the accident; (2) whether there was any such evidence to support their finding that the injured youth was not guilty of contributory negligence; and (3) whether there was any such evidence of any pecuniary loss to plaintiff.

It may be, and must be, very difficult for many persons to think that one who did not hear the sound of a swift passing train, within a few feet of him, on a still morning, with no other sounds interfering, would have heard the sound of the whistle at least 80 rods away, or the ringing of the bell whilst swiftly passing that distance. The roar of a train under such circumstances, is, as every one knows, so great that it is extremely difficult, if not quite impossible, to believe that any one having the sense of hearing, and exercising it with a view to self-preservation at a railway crossing, could fail to hear it. But one's mind may be so abstracted as to fail to observe it, and yet the shrill sound of the whistle, or even the sound of the bell, might possibly awaken such a mind to a sense of danger from the on-coming train. It cannot, therefore, be said that the case ought not to have gone to the jury at all, that plaintiff ought to have been nonsuited on this ground.

But I cannot think there was any sort of reasonable evidence upon which the jury could find that there was not contributory negligence. A youth—19 years of age—in possession of all his faculties, ran into a passing train in the day time, and was almost necessarily seriously wounded. The one circumstance in his favour was that it was a misty