

MAGEE, J.

FEBRUARY 2ND, 1905.

TRIAL.

MOORE v. GRAND TRUNK R. W. CO.

Trial—Jury—Inconsistent and Unsatisfactory Findings—Retrial.

Action for damages for death of plaintiff's husband, who was struck by a train in crossing a track of defendants.

Four questions were submitted to the jury, and answered as follows: "1. Q. Was the death of plaintiff's husband, William Moore, occasioned by negligence of defendants? A. Yes. 2. Q. If so, wherein did such negligence consist? A. In not ringing bell. 3. Q. Could William Moore have avoided the injury by the exercise of reasonable and ordinary care? A. Yes. But it has not been proven to us that he did not use ordinary care? 4. Q. What damages do you assess? A. \$2,700." In consequence of the apparent inconsistency in the answer to question 3, the jury were then asked: "5. Q. If William Moore had used reasonable and ordinary care, would he have sustained injury? A. In absence of evidence to prove that he did not use ordinary care, we believe he did use ordinary care." This answer the jury afterwards changed to "Yes." Then two more questions were put: "6. Q. Did the deceased use reasonable and ordinary care in going towards and on plaintiffs' (should have been defendants') track upon the occasion of the injury? A. Yes. 7. Q. If he did not do so, wherein was he negligent?" Not answered.

R. C. Clute, K.C., and E. G. Morris, for plaintiff.

W. R. Riddell, K.C., for defendants.

MAGEE, J., referred to and quoted from the judgments in *Rowan v. Toronto R. W. Co.*, 29 S. C. R. 717, and held that on the answers of the jury in the present case judgment could not be entered for either party, and the action must be retried. See *Faulkner v. Clifford*, 17 P. R. 363, and *Carter v. Grasett*, 14 A. R. 685.

BOYD, C.

FEBRUARY 2ND, 1905.

TRIAL.

SANDWICH EAST (No. 1) ROMAN CATHOLIC SEPARATE SCHOOL TRUSTEES v. TOWN OF WALKERVILLE.

Schools—Separate Schools—Adjoining Municipalities—Three-mile Limit—Separate School Supporters—Notice—Change in Assessment Rolls—Court of Revision.

Action for a declaration that plaintiffs were entitled to have those of the ratepayers of defendant municipality who