

when, just before attempting to cross, he might have seen the train.

*Held*, that it was not so clearly manifest that the plaintiff was the cause of his own injury that there was nothing to leave to the jury; although the plaintiff might be guilty of some neglect in approaching the track, it was for the jury to say whether the defendants might not still have avoided the accident if they had discharged their statutory duty; the case was properly left to the jury; and their findings were sufficient to support a verdict for the plaintiff.

Decision of a Divisional Court reversed.

*Proudfoot*, K.C., for plaintiff, appellant. *Riddell*, K.C., for defendants.

Full Court.]

[April 23.]

*SIMS v. GRAND TRUNK R.W. Co.*

*Railway—Negligence—Injury to person crossing track—Failure to look for train—Contributory negligence—Case for jury—Unsatisfactory verdict—Damages—New trial.*

The infant plaintiff was injured by being struck by the engine of a train of the defendants, while crossing their track at a level highway crossing. Had he looked, he could have seen the approach of the train, but he did not look. There was some evidence that the usual statutory signals of the approach of the train were not given. The infant plaintiff sought to recover damages for his injuries, and the adult plaintiff, the infant's father, claimed damages for loss and expense incurred by him in consequence of the injuries.

*Held*, affirming the decision of Street, J., 10 O.L.R. 330, that the case could not have been withdrawn from the jury; but that the findings were opposed to the great weight of the evidence, and the damages recovered by the father excessive; and therefore there should be a new trial.

*Riddell*, K.C., for defendants, appellants. *John MacGregor*, for plaintiffs.

Full Court.]

[April 23.]

*MISENER v. WABASH R.W. Co.*

*Railway—Negligence—Injury to person crossing track—Failure to look for train—Contributory negligence—Case for jury.*

In an action under the Fatal Accidents Act to recover damages for the death of a man who was struck by a light engine of the defendants when attempting to cross their track in a wag-