exercised that standard of care which might reasonably be expected of him. Even in the case of adults failure to look before crossing a railway track cannot be said as a matter of law to be contributory negligence. Whether or not it was such negligence, having regard to all the circumstances, it was for the jury to say, especially in view of the fact that a car moving in the opposite direction had just passed as the boy went on the west track.

The appeal should be allowed with costs, the judgment set aside, and a new trial directed, and the respondents should pay the costs of the last trial forthwith after taxation.

*New trial directed.*

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FIRST DIVISIONAL COURT. APRIL 26TH, 1920.

## *RE McCONKEY ARBITRATION.

*Landlord and Tenant—Termination of Lease—Payment by Landlord for "Buildings and Improvements" of Tenant—Fixtures not Removed by Tenant—Construction of Lease—Arbitration and Award—Effect of Opinion of Judge upon Case Stated by Arbitrators—Arbitration Act, sec. 29—Award Following Opinion Expressed—Motion to Set aside Award upon Ground that Opinion Erroneous—Appeal.*

Appeal by the Toronto General Trusts Corporation, lessors, from an order of SUTHERLAND, J., 17 O.W.N. 329, refusing to set aside an award dated the 13th October, 1919.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and FERGUSON, JJ.A.

E. G. Long, for the appellants.

M. H. Ludwig, K.C., for E. G. E. McConkey, the lessee, respondent.

FERGUSON, J.A., reading the judgment of the Court, said that in making the award the arbitrators followed the opinion of Middleton, J., in Re McConkey Arbitration (1918), 42 O.L.R. 380, given on a case stated by the arbitrators under sec. 29 of the Arbitration Act, R.S.O. 1914 ch. 65.

The appellants did not complain that the arbitrators failed to interpret properly and follow the opinion of Middleton, J.; the appellants maintained that the opinion was wrong; that it