

either of them could have been recalled if there was anything that the appellant desired to bring out that had not been brought out. The appellant's counsel, though he said that he did not consent to Goyette being added, did not suggest that the appellant was or would be prejudiced, or suggest or ask for a postponement of the trial, if he was not ready to meet the case as presented owing to the change made in the plaintiffs to the counter-claim.

The appeal should be dismissed with costs.

MACLAREN, HODGINS, and FERGUSON, JJ.A., agreed with MEREDITH, C.J.O.

MAGEE, J.A., agreed in the result, for reasons stated in writing.

*Appeal dismissed with costs.*

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FIRST DIVISIONAL COURT.

FEBRUARY 20TH, 1920.

\*DIXON v. GRAND TRUNK R.W. CO.

*Negligence—Collision of Motor-car with Backing Train upon Highway Crossing of Railway—Action by Person in Motor-car—Findings of Jury—Negligence of Railway Company—Contributory Negligence of "those in Charge of Auto"—Motor-car Hired by Five Occupants—Driving Entrusted to One—Agency—All Five in Control of Car.*

Appeal by the defendant company from the judgment of the County Court of the County of Brant, upon the findings of a jury at the trial, in favour of the plaintiff for the recovery of \$381.20 and costs in an action for damages for personal injuries sustained by the plaintiff in a collision between a motor-car in which he was and a train of the defendant company, which was backing across a highway in the city of Brantford.

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

D. L. McCarthy, K.C., for the appellant company.

J. Harley, K.C., for the plaintiff, respondent.

MEREDITH, C.J.O., reading the judgment of the Court, said that the respondent and four other young men, being desirous of

\* This case and all others so marked to be reported in the Ontario Law Reports.