

RIDDELL, J.

FEBRUARY 18TH, 1909.

TRIAL.

SEXTON v. GRAND TRUNK R. W. CO.

Railway—Animals Killed on Track—Intersection of Railway with Highway—Cows Driven by Boy of Ten Years—Railway Act, R. S. C. 1906 ch. 37, secs. 294, 294 (3)—“Competent Person” — Negligence — Failure of Servants of Railway Company to Give Warning of Approach of Train—Evidence—Findings of Jury—Motion for Nonsuit.

Action for damages for the loss by plaintiff of 4 cows killed by a railway train of defendants at a highway crossing.

J. M. Godfrey, for plaintiff.

W. E. Foster, for defendants.

RIDDELL, J.:—This is a case tried before me with a jury at the Toronto assizes. The facts are very simple.

The plaintiff, who is a farmer residing in the township of Scarborough, on 25th July last, about the time that the morning train going east was expected, sent his son, a lad of 10, to take 14 cows along a public highway, across the line of railway, to a field south of the track. The train came along and killed 4 of the cows, the train travelling at the usual speed and at the usual time.

Four questions were submitted to the jury, which questions I here set out with the answers:—

1. Were the cows killed through the negligence of any one? Ans. Yes.

2. If so, what was the negligence? Answer fully. Ans. In not blowing whistle and ringing the bell at the proper time. We also believe the engineer could have stopped his train in time to have avoided the accident.

3. Damages, if any? Ans. \$200.

4. Was the lad a “competent person?” Ans. Yes.

A motion for nonsuit had been made at the close of the plaintiff's case, and reserved; this motion was again made at the close of the whole case, and again reserved. I now proceed to dispose of the case.

There was evidence upon which the jury might find that the accident was caused by the neglect of the defendants'