

REPORTS AND NOTES OF CASES.

Province of Ontario.

COURT OF APPEAL.

Full Court.]

C. v. D.

[May 26.]

Husband and wife—Criminal conversation—Abandonment—Separation—Hearsay evidence—Damages.

Appeal by the defendant and cross-appeal by the plaintiff from the judgment of a Divisional Court reported 8 O.L.R. 308, dismissed—the appeal—on the ground that the evidence did not shew such abandonment by the plaintiff of his wife as deprived him of his right of action, and—the cross-appeal—on the ground of improper reception of evidence at the trial and excessive damages.

E. B. Ryckman, and J. S. MacInnes, for defendants' appeal.
Wm. R. Smyth, for plaintiffs' cross appeal.

Boyd, C., Magee, J., Mabee, J.]

[June 11.]

NEWELL v. CANADIAN PACIFIC RY. CO.

Railways—Unfenced premises—Trespasser—Evidence—Onus—Negligence.

A boy, over eight years of age, entered from the adjoining highway upon the unfenced premises (a freight yard) of the defendant company for the purpose of gathering up pieces of coal dropped from the cars and in doing so got under or alongside the wheels of a car which in being shunted ran over and killed him at a place over 400 feet from where he entered the yard.

Held, that he was wrongfully trespassing where he had no business or invitation to be.

Held, also, that the plaintiffs had not satisfied the onus cast upon them to establish by evidence circumstances from which it