

MULOCK, C.J., allowed the appeal and required the plaintiffs to elect whether one of them, and if so which, would proceed with the action, or whether the action should be dismissed without costs.

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MULOCK, C.J.

MARCH 16TH, 1909.

CHAMBERS.

TITCHMARSH v. GRAHAM.

TITCHMARSH v. McCONNELL.

*Pleading—Statement of Defence—Embarrassment or Irrelevance—Action for Trespass and False Imprisonment—Defence Setting out Facts and Pleading “Not Guilty by Statute”—Conviction—No Allegation of Quashing.*

Appeal by plaintiff from order of Master in Chambers, ante 618.

J. B. Mackenzie, for plaintiff.

W. E. Middleton, K.C., for defendant Graham.

W. H. McFadden, K.C., for defendant McConnell.

MULOCK, C.J., dismissed the appeal with costs

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TEETZEL, J.

MARCH 18TH, 1909.

TRIAL.

BADGELEY v. GRAND TRUNK R. W. CO.

*Trial—Action for Negligence—Findings of Jury—Questions and Answers—Injury Caused by Defendants’ Negligence—Question whether Plaintiff could have Avoided Injury by Exercising Reasonable Care—Answer, “He might have”—Construction—Contributory Negligence.*

An action for damages for injury occasioned to plaintiff while crossing the defendants’ railway in the city of Belleville, in which plaintiff alleged the negligence to be the failure of the engine-driver to sound the whistle and ring the bell, as required by statute.