

APRIL 23RD, 1906.

C.A.

WRIGHT v. GRAND TRUNK R. W. CO.

Railway—Injury to Person Crossing Track—Failure to Look for Train—Efficient Cause of Accident—Nonsuit—Contributory Negligence.

Appeal by plaintiff from order of a Divisional Court, 5 O. W. R. 802, setting aside judgment for plaintiff, and dismissing action.

W. Proudfoot, K.C., for plaintiff.

W. R. Riddell, K.C., for defendants.

The judgment of the Court (MOSS, C.J.O., OSLER, GARROW, MACLAREN, J.J.A., CLUTE, J.), was delivered by

CLUTE, J.:—The jury have found that plaintiff's injury was caused by the defendants' negligence, by not using sufficient signals to attract the injured man's attention, and that the conductor was not on the rear end of the car. They have also found that plaintiff could not by the exercise of ordinary care have avoided the injury.

Having regard to the facts of the case and the charge of the learned Judge, the meaning of the findings is that defendants did not discharge their statutory duty by sounding the whistle and ringing the bell, and that there was no one on the front of the rear car as the train was being backed into the siding.

There is sufficient evidence to support these findings, and plaintiff is entitled to retain the judgment entered for him at the trial, unless it appears that plaintiff was the cause of his own injury. It is upon this ground that the judgment appealed from proceeds. That is, that, notwithstanding the finding of the jury that there was no want of care on the part of plaintiff, it is so clearly manifest that he was the cause of the injuries complained of, that there was neither any fact nor inference from fact to be left to the jury to decide.