that the order could not be supported, and must be set aside; and his name, if struck off, restored to the register.

What constitutes "infamous or disgraceful conduct in a professional respect," considered and commented on, as well as the evidence submitted with reference thereto, and the course pursued by the prosecution on the hearing of the charge.

W. F. Kerr, for appellant. *Curry*, K.C., for Discipline Committee. *H. S. Osler*, K.C., for Medical Council.

[Dec. 15, 1906.

Falconbridge, C.J.K.B., Britton, J., Clute, J.]

BURTCH v. CANADIAN PACIFIC RY. Co.

Railways—Crossing in town—Hand-car—Warning—Finding of jury—Railway committee jurisdiction—Infant plaintiff—Contributory negligence—By-law—Invoking for another purpose.

A child of ten years of age was coasting down an incline on a street in a town crossed by a railway and was run down and injured by a hand-car proceeding along the railway. At the trial the jury found in answer to questions amongst other answers that the defendants were negligent in not giving some warning in approaching the crossing; that the defendants could have avoided injuring the plaintiff by stopping the hand-car and that it was their duty apart from the provisions of the Railway Act to have given warning.

Held, 1. The jury in finding that the railway should have given such warning were not assuming to lay down any general rule as to what care or precaution should be taken, but simply that under the circumstances some warning should be given, that the answer was unobjectionable and in no way infringed upon the jurisdiction of the Railway Commission.

2. Even if a hand-car is not a train a warning was necessary apart from the Railway Act.

3. Although there was a municipal by-law to prohibit coasting, the plaintiff had not been "warned," which was necessary under its provisions to make coasting an offence and the onus is on the defendants to prove criminal capacity at common law and under the Code of an infant under fourteen, and the defendants were not entitled to invoke such by-law for another purpose.