

1927

\*Oct. 12.

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WINNIPEG ELECTRIC COMPANY V. SCOTT

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

*Negligence—Street railways—Non repair of crossing—Injury to pedestrian—Liability of railway company—Sufficiency of inspection—Jury's findings—Appeal.*

APPEAL by the defendant from the judgment of the Court of Appeal for Manitoba (1) affirming the judgment

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\*PRESENT:—Duff, Newcombe, Rinfret, Lamont and Smith JJ.

(1) 36 Man. R. 357; [1927] 1 W.W.R. 739.

of Adamson J. (on findings of a jury) in favour of the plaintiff against the defendant company, in an action for damages for personal injuries to the plaintiff caused by his being tripped by a loose plank in a crossing on a railway track of the defendant, for which accident the defendant was alleged to be responsible.

1927  
WINNIPEG  
ELECTRIC  
Co.  
v.  
SCOTT.

*R. D. Guy K.C.* for the appellant.

*H. Hudson K.C.* and *H. J. Symington K.C.* for the respondent.

At the conclusion of the argument of counsel for the appellant, and without calling on counsel for the respondent, the judgment of the court was orally delivered by

DUFF J.—We are all of the opinion that the appeal should be dismissed with costs. It is quite unnecessary to go into the questions of law suggested on the argument—in particular, as touching the precise responsibility cast upon the Railway Company by the by-law and the statute and the agreement. It was not disputed—and, of course, it could not be disputed in the circumstances—that, if the Railway Company was negligent and that negligence was the cause of the accident, then they are responsible; and, from that point of view, negligence or no negligence turns entirely upon whether there was a reasonably sufficient inspection. This question was left to the jury and the jury found that the Railway Company had not discharged its responsibility in this respect. We are unanimously of the opinion that the court below was right, and that, the evidence being such as it was, it would have been quite out of the question to withdraw the case from the jury.

*Appeal dismissed with costs.*

Solicitors for the appellant: *Anderson, Guy, Chappell & Duval.*

Solicitors for the respondent: *Hudson, Ormond, Spice & Symington.*

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