

Province of Ontario.

COURT OF APPEAL.

Osler, J.A.] HOLDEN v. GRAND TRUNK R.W. Co. [Jan. 26.

*Negligence—Railway accident—Death of engine driver—Disobedience to orders—Contributory negligence—Signals.*

Appeal from judgment of FALCONBRIDGE, C.J. at the trial.

This was an action by the widow of one of the defendants' engine drivers who lost his life by reason, as alleged, of the defendants' negligence. It appeared that at the point where the accident occurred there was a switch for a siding from the defendants' main line running up to the works of a smelting company. Under the orders of the Railway Committee of the Privy Council an interlocking, derailing and signal apparatus was to be constructed and operated at this point. Such apparatus, if complete and in good working order, would enable workmen in a tower or cabin at some distance from the rails, by means of a mechanical device, to move or shift and lock securely the points of the switch, and at the same time to display the signals which were intended to guide the engine drivers in the management of their trains, by indicating whether the switch or the main line was open. One of the signals was known as the Home signal, situate 500 feet from the switch and containing two arms of which the upper would be dropped if it indicated that the main line was open, while if the lower was dropped it indicated that the siding was open. If both were dropped it would indicate nothing, the one being inconsistent with the other. On the morning of the accident, the defendants' signal engineer reporting the apparatus as ready to be operated, the plaintiff's husband with other engine drivers was notified that it was in working order, and that all the trains should be governed by rules governing interlocking and derailing appliances. As a fact, however, the apparatus was not in working order, and when the train, of which the plaintiff's husband was the driver, approached the point in question, both arms of the Home signal were down. A switchman, whom the defendants sent to take charge of the interlocker, failed to give notice to his superiors as to the interlocker not being in working order, though he remained at the switch all day, and had flag signals to use in case of necessity. When the train in question approached this switchman asked the men who were still working on the interlocking apparatus if it was all right, and they replied that it was all right, meaning that the switch had been set for the main line, accordingly he did not flag the train to stop. As a matter of fact the switch had not been properly fastened, and the engine passing over the point displaced it, and the train was derailed and thrown down the embankment, and the driver was killed.