

dants' electric motor tramway, running between their ore-bins and smelter furnaces, having crossed the track, set the switch for the motor which was about to return from the furnaces, started back over the track in order to take his usual seat on the head end of the motor and got his foot caught in a hole in the floor between the rails. He shouted to the motorman, who immediately cut off the current and applied the brakes, but the motor did not stop quickly enough to prevent the accident, with the result that the motor ran upon the plaintiff, breaking his leg in three places. The evidence disclosed the facts that the hole in question had been there some time previous to the accident; that the accident occurred just previous to daybreak, and that the plaintiff had not been at work for more than one shift. There was also some suggestion in the evidence that the hole was left there for the purpose of making room for a bar connecting the two rails in the track.

Held, on appeal (affirming the judgment of IRVING, J., at the trial), that the accident was caused by a structural defect in the ways of the defendant company, and that the plaintiff was entitled to recover.

Davis, K.C., for defendants (appellants). *S. S. Taylor*, K.C., for plaintiff (respondent).

Full Court.] WHITE v. VICTORIA LUMBER CO. [Oct. 30.

Master and servant—Locomotive engineer—Death of, caused by jumping from train—Equipment of train—Efficiency of—Negligence of driver—Competency of fellow servants—Damages, excessive—New trial—Costs.

Plaintiffs sued defendant company for damages for the death of their son, a locomotive engineer in the defendants' employ, who was killed by having jumped from a train over which he had lost control. The jury found \$6,000 common law damages.

Held, on appeal, by HUNTER, C.J., that the only verdict reasonably open to the jury on the evidence, was that the deceased lost his life by his own negligence.

Per IRVING, J., that the damages were excessive.

Per MORRISON, J., that the verdict should stand.

New trial ordered; costs of appeal to defendant company in any event; costs of first trial to abide the new trial.

Bodwell, K.C., for defendant (appellant) Co. *McCrossan*, and *Harper*, for respondents.