

Times L. R. 388, where it is said that the legislature did not intend to leave it to the workman to go into the question whether the order given was right, if it was an order he was bound to obey. This is not a case of giving an unlawful order. It was said to be an order to do something contrary to the rules of the company. But it was not shewn that plaintiff knew, as in some of the cases, that it was contrary to a rule.

As to the question of volenti, I was not asked to submit any question to the jury on this subject, and, in the absence of any finding by them that plaintiff undertook the risk of doing what he says he did on the bridge, plaintiff is entitled to judgment on the findings of the jury.

I may say that I was not very well satisfied with the findings of the jury in this case. They were certainly against the preponderance of testimony. As the case stands, however, judgment must be entered for plaintiff for \$1,250 and costs.

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FALCONBRIDGE, C.J.

APRIL 19TH, 1905.

TRIAL.

LINDSAY WATER COMMISSIONERS v. FAUQUIER.

*Work and Labour—Action to Recover Value—Protection of Plaintiffs' Works from Injury by Defendants—Value of Reasonably Necessary Work.*

Action by plaintiffs to recover moneys expended by them in protecting their water main from injury by reason of certain railway construction work carried on by defendant in its vicinity.

H. O'Leary, K.C., and G. H. Hopkins, Lindsay, for plaintiffs.

J. B. Clarke, K.C., for defendant.

FALCONBRIDGE, C.J.:—The following is the statement of Mr. Flavelle of the conversation between him and Mr. Fauquier:

Q.—Did you have any conversation with Mr. Fauquier in reference to the railway crossing or water main? A.—Yes.

Q.—More than one conversation? A.—No.

Q.—When was that? A.—To the best of my recollection it was early last spring, in Kent street.

Q.—What was the nature of the conversation? A.—I met Mr. Fauquier and called his attention to the fact that he