

mentioned could have had any such effect upon the horses as to make the driver powerless to get away from the track in sufficient time to avoid a collision. It was quite within their province to take this view and having done so they would naturally regard the proved neglect of the company in the matter of the statutory signals as accounting for the accident.

HON. MR. JUSTICE ANGLIN (*dissenting*):—The jury in this case found the appellants liable for the death of the plaintiff's husband and daughter, who were killed at a highway crossing of the railway, on the following grounds:—

1. Absence of the warning signboard required by the Railway Act at highway crossings.

2. Excessive grade in the highway approaching the crossing.

3. Failure to give statutory signals.

In the provincial Courts the verdict for the plaintiff has been upheld, but on the first ground only. In the judgment of the Court of Appeal the other grounds are not noticed. In the Divisional Court, the finding of absence of statutory signals seems to have been deemed so greatly against the weight of evidence that, had the verdict for the plaintiff depended upon it, a new trial must have been ordered; and it was held that there was no evidence upon which the jury could find that the excessive grade "in any way caused or contributed to the happening of the accident."

With great respect I think this latter remark might, with at least equal justice, be applied to the absence of the sign post. No one saw the unfortunate occurrence. The speed at which the waggon was driven is not known. It is, and must remain, purely a matter of conjecture whether the driver and the occupants of the waggon were unaware of the proximity of the crossing until they were actually upon it, or whether they drove up to and upon it with full knowledge of its existence and proximity, and relying upon effecting a safe crossing, their expectation being disappointed either because they had miscalculated the distance or speed of the train, or because the horses failed them at a critical moment. Indeed, unless the unfortunate persons who were killed were peculiarly unobservant (the evidence is that they were particularly careful persons and very well acquainted with the locality) it is difficult to understand how the approaching train could have escaped their attention; and if they saw it, the inference would be irresistible that they must have been