

of ascent approaching the appellants' right-of-way on the north side of the rail at the crossing where the accident happened was two feet three inches for the first twenty feet of horizontal length in violation of section 242 of the Railway Act.

Where there is conflicting evidence on a question of fact, whatever may be the opinion of the trial Judge as to the value of the evidence, he must leave the consideration of it for the decision of the jury: *Dublin, Wicklow and Wexford Railway Co. v. Slattery*, 3 App. Cas. 1155.

It has been repeatedly stated by different learned Judges that each case must be looked at from its own surroundings and under the peculiar circumstances attending it. The findings of the jury on this branch were reasonable findings of facts and cannot now be interfered with: *Johnston v. Grand Trunk R. Co.*, 25 O. L. R. 64, 21 A. R. 408; *Champaigne v. Grand Trunk R. Co.*, 9 O. L. R. 598, 4 Can. Ry. Cas. 207; *Sims v. Grand Trunk R. Co.*, 10 O. L. R. 330, 12 O. L. R. 39, 5 Can. Ry. Cas. 82, 352; *Wright v. Grand Trunk R. Co.*, 12 O. L. R. 114, 5 Can. Ry. Cas. 361.

When a person is injured at a railway crossing there is a reasonable presumption that the warning conveyed by the sound of a bell or whistle or the erection of a sign post or the proper grade approaching the railway track would have been beneficial to him, and therefore in such a case it should be presumed that his injury was caused by the omission to give such signals or the absence of the sign post or the existence of an improper grade: *Shoebrink v. Canada Atlantic R. Co.*, 16 O. R. 515; *Johnston v. Grand Trunk R. Co.*, 21 A. R. 408.

It is sufficient evidence to submit to the jury that the deceased were seen approaching the track in a vehicle just before the passing of the train and that immediately after the passing of the train the deceased were found dead and that the statutory signals were not given: *Johnston v. Grand Trunk R. Co.*, 25 O. R. 64, 21 A. R. 468; *Peart v. Grand Trunk R. Co.*, 10 A. R. 191. In Privy Council, 10 O. L. R. 753, 5 Can. Ry. Cas. 347.

His Lordship Justice Patterson, in delivering his judgment in the Court of Appeal in *Peart v. Grand Trunk R. Co.*, 10 A. R. 191, at page 201, says that "if the *Davey Case* was tried here it could not properly be withdrawn from the jury."