

NEGLIGENCE—DEFECTIVE RAILWAY WAGGON—MASTER AND SERVANT—INJURY TO SERVANT ARISING FROM DEFECTIVE WAGGON BELONGING TO THIRD PARTY.

The Caledonian Ry. Co. v. Mulholland (1898), A.C. 216, was an appeal from a Scotch court in an action of negligence. The facts were as follows: The Caledonian Ry. Co. had a contract with the gas commissioners at Glasgow to deliver coals at Dumfries station, and the Glasgow & S. W. Ry. had a contract with the gas commissioners to haul the coal from the Dumfries station to the gas works: for the convenience of transport, the coals were not unshipped at the Dumfries station, but remained in the Caledonian Ry. Co.'s waggons, and these waggons were then taken possession of by the Glasgow & S. W. Ry. Co., and hauled by horses under the control of their men to the gas works. One of the waggons of the Caledonian Ry. Co. had a defective break, and in consequence of this defect the plaintiff's husband, who was in the employment of the Glasgow & S. W. Ry., was killed. The action was brought against both railway companies, and upon a proceeding in the Scotch Court, somewhat in the nature of a demurrer, they were both held to be liable. The Caledonian Ry. Co. appealed to the House of Lords (Lords Halsbury, L.C., and Herschell, Macnaghten, Morris and Shand), and their appeal was unanimously allowed. The case seems to establish the proposition, that when a deceased person comes to his death by reason of a defect in a vehicle or other apparatus of another, who owed him no duty to have such vehicle or apparatus in an efficient condition, there is no liability on the part of such other person to the representatives of the deceased. *Heaven v. Pender*, 11 Q.B.D. 503, was relied on by the respondents, but was considered by Lord Herschell to rest on the ground that in that case the third party had in effect invited the person injured to use the defective staging.