

been avoided. He did hear and heed the warning of the torpedoes in so far as it was his duty to do so, namely, until he saw that the freight train was off the main and on to the passing track. When he felt assured of this, he had the right to proceed as usual, which he did—certainly unless he saw some danger ahead in time to do something to avoid it. When the imminence of the accident became apparent, he did all he could, but it was too late.

The duty to respond to the signal of the torpedoes for the purposes indicated, and to which proper response was apparently made, could not be effectually appealed to by the plaintiff so as to make the defendants liable on the score that, if the engine-driver had on account thereof slowed down more, the accident might not have occurred: *Walsh v. International Bridge and Terminal Co.* (1918), 44 O.L.R. 117.

The learned Judge said that he was unable to see from the evidence that negligence on the part of the defendants could properly be found, and therefore was of opinion that the appeals should be dismissed with costs, if asked.

MULOCK, C. J. Ex., agreed with SUTHERLAND, J.

RIDDELL, J., was also of opinion, for reasons stated in writing, that there was no negligence on the part of the defendants, and that the appeals should be dismissed.

MASTEN, J., agreed with RIDDELL, J.

CLUTE, J., read a dissenting judgment. He was of opinion that there was a duty on the part of both Pidgen and the engine-driver of No. 1, which they had neglected. There should be a new trial in the case of Fletcher, and the other plaintiffs should have judgments for damages to be agreed upon or assessed.

Appeals dismissed (CLUTE, J., dissenting).

SECOND DIVISIONAL COURT.

MAY 4TH, 1920.

*ANTICKNAP v. CITY OF ST. CATHARINES.

Highway—Nonrepair—Defective Grating in Sidewalk—Injury to Pedestrian—Liability of Municipal Corporation—Claim by Corporation for Relief over against Owner and Tenants of Premises Fronting on Sidewalk—Grating Put in for Benefit of Premises—Liability at Common Law—Negligence—Liability under sec. 64 (1) and (2) of Municipal Act—Duty to Repair—Covenant of Tenants with Owner.