

also to be used as part of the accommodation furnished. That it was being used, and used extensively and continuously, is abundantly clear from the evidence. And that it was out of repair and dangerous, to the knowledge of the station agent in charge, long before the accident, was not, on the evidence, an unreasonable inference, especially as the station agent was not called to deny it.

That it was necessary in order to reach the northerly road-way to drive over the rails which lay between the one road and the other, while of some significance, was certainly not, under the circumstances, conclusive.

The appeal, in my opinion, fails and should be dismissed with costs.

MEREDITH, J.A.:—There was evidence upon which the jury might find that the road, on the south side of the track, was apparently one intended to be used for the purpose of loading and unloading cars standing on the track lying between it and the road on the north side of it; also that the man who was killed was proceeding by way of the northerly road to the southerly one, there to unload the car, and was acting with ordinary care in so doing; and that the accident was caused by the negligence of the defendants in leaving a dangerous hole in the southerly road; and so a case for the jury was made; and the question of contributory negligence was also one for them on the facts of the case.

If the defendants did not intend the southerly road to be so used, they should have given notice to that effect or have stopped it up; for as it was it constituted an invitation, and one of an attractive character, saving the turning around of waggons on either side to unload there.

I would dismiss the appeal.

MOSS, C.J.O., MACLAREN and MAGEE, J.J.A., concurred.

*Appeal dismissed.*