

It is, I think, impossible to regard the findings as a whole as having in any way attributed the advance to the signal of the conductor. On the contrary, the jury's idea of the conductor's negligence is not that he gave that signal, but that he should have given an order to the engineer to back up until the semaphore was lowered. And that the jury were convinced that the engineer was in fault is decisively evidenced by their very unusual method of dealing with the damages.

I would for these reasons allow the appeal and affirm the judgment of the trial Judge. And the defendants should have, if they ask, the costs of the appeal to the Divisional Court and to this Court.

HON. MR. JUSTICE MEREDITH:—The loss of life, and the injury to property of great value, out of which this action has arisen was caused directly by flagrant breaches of his plain orders and duty by the engineer of the locomotive, which he drove leisurely over the brink of, and into, the canal, causing the loss of his own life and great damage to his masters the defendants in this action: and yet it has been held in a Divisional Court, reversing the judgment of the trial Judge, that the defendants are liable in damages for the death of the engineer so caused. If such be the law of this province, to say the least of it, it is an extraordinary law.

The facts are simple and plain, and little if at all in dispute. The place where the accident, and the circumstances leading up to it, happened was one calling for great care; and that was well known to the engineer and emphasised in the working rules of the defendants under which he was employed and with which he was familiar; the most important, in this case, of the rules was the obvious one that no engineer should proceed to cross the draw-bridge until he had received the proper signal to do so from those in charge of the bridge and the signals connected with it: not only was that a thing which would be obvious without any rules; and not only was it a thing emphatically made plain in the rules; but it was also considered by Parliament to be of such importance that it was prohibited, in anyone, by positive enactment which also imposed a heavy penalty for every disregard of it: the Railway Act secs. 273, 389 and 390.