

by the learned trial Judge was correct. He might very well, in my opinion, even have granted the motion for nonsuit made by the defendants at the close of the plaintiff's case—all the undisputed facts upon which his final judgment was based having then appeared.

But, assuming that the case was one proper to be passed upon by a jury, I am quite unable to agree with the Divisional Court that it was permissible to ignore the finding of the jury as to the engineer's contributory negligence. There is no evidence that they did not fully understand and appreciate the exact situation. The charge had fully instructed them as to the opposing contentions of the parties. Under that of the plaintiff, there was no contributory negligence causing or helping to cause the accident. Under that of the defendants, the engineer's original negligence in passing and ignoring the semaphore continued, while the action of the conductor was a mere incident in bringing about the result.

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.

MEREDITH, J.A., reached the same result, for reasons stated in writing.

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

*Appeal allowed.*

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