

"Mere allegation or proof that the company were guilty of negligence is altogether irrelevant; they might be guilty of many negligent acts or omissions which might possibly have occasioned injury to somebody but had no connection whatever with the injury for which redress is sought, and therefore the plaintiff must allege and prove, not merely that they were negligent, but that their negligence caused or materially contributed to the injury."

Lord Cairns in delivering his judgment in *Metropolitan R.W. Co. v. Jackson*, 3 App. Cas. 193, thus deals with the matter: "The negligence must in some way connect itself or be connected by evidence with the accident. It must be, if I might invent an expression, founded upon a phrase in the Civil Law *incuria dans locum injuriæ*."

The appellants, upon the argument, referred to the following cases: *Davey v. London and South-Western R.W. Co.*, 11 Q. B. D. 213, 12 Q. B. D. 70; *Bird v. Great Northern R.W. Co.*, 28 L. J. Ex. 3; *Daniel v. Metropolitan R.W. Co.*, L. R. 3 C. P. 222; *Hayes v. Michigan Central R.W. Co.*, 111 U. S. (4 Davis), 241; *Metropolitan R.W. Co. v. Jackson*, 3 App. Cas. 193; *Blake v. Canadian Pacific R.W. Co.*, 17 O. R. 177; *Casey v. Canadian Pacific R.W. Co.*, 15 O. R. 574; *Danger v. London Street R.W. Co.*, 30 O. R. 493; *O'Hearn v. Town of Port Arthur*, 4 O. L. R. 209, 2 Can. Ry. Cas. 173; *Follet v. Toronto Street R.W. Co.*, 15 A. R. 346.

L. J. Reyecraft, for the respondent. The judgment pronounced by the Common Pleas Division of this honourable Court should be affirmed for the following among other reasons:

1. The jury found as facts in answer to questions submitted to them by the learned trial Judge:—

(a) That the appellants were guilty of negligence which caused the death of the plaintiff's husband and daughter.

(b) That the negligence consisted in: Absence of sign post; that the proper crossing signals were not given; and in defective grade.

(c) That the deceased husband and daughter or David Toll could not by the exercise of reasonable care have avoided the collision between the train and the wagon.

As to the appellants being guilty of negligence there is no dispute. It is admitted that the sign post was not erected and maintained as is provided for by section 243 of the Railway Act. It is also admitted that the grade or inclination