

SUTHERLAND, J., in a written judgment, said that at the crossing where the accident occurred four lines of the defendants' tracks intersected the highway. A freight train had reached a point opposite the semaphore to the east of the highway, and one Pidgen, an experienced brakesman and one of the train-crew, had gone back and placed two torpedoes on the rails, in pursuance of one of the operating rules of the defendants for "train movement," rule 99. This was to serve as a signal. As explained by rule 15, the explosion of two torpedoes is a signal to reduce speed and look out for a stop-signal. These rules are to prevent the collision of trains, not for the protection of persons or vehicles at highway intersections. Pidgen saw the motor-car standing 10 or 15 feet to the south of the southerly switching track. The driver of the car spoke to Pidgen, who told him that an opening in the freight train would be made as soon as possible. Pidgen stepped in between two cars to separate the air-hose, and then stepped out again to the south side of the train, and gave a signal to the engine-driver to back, which was done. The driver started the motor-car, and, without Pidgen's knowledge, crossed the southerly main track, and was approaching or had reached the northerly main track, when Pidgen caught sight of the front of the motor-car, and at the same instant heard a passenger train, No. 1, coming from the west at a rapid rate. He shouted, "My God! Look out for No. 1," but the train was immediately upon and struck the motor-car, with the resulting injury and death above indicated.

Walker testified that Pidgen signalled him, by a wave of the hand, to come across. Pidgen said he gave no signal of any kind.

The negligence charged was giving an invitation to cross when there was danger.

The statutory warnings by whistle and bell of the approach of train No. 1 were given, as the trial Judge found. He also found that Pidgen gave no signal to the driver of the motor-car to go forward.

The engine-driver of train No. 1 testified that he was running at a speed of from 50 to 55 miles an hour when the engine ran over the two torpedoes, and he thereupon "answered them and reduced speed somewhat." Neither he nor his fireman saw the motor-car until they were almost upon it.

Evidence was given, subject to objection, that persons had met their death at the same crossing many years ago.

It was argued that, even though there was no duty as to the rate of speed otherwise, when the torpedoes were heard the engine-driver of No. 1 train should have slowed down to a lower rate of speed than he did, and, had he done so, the accident might have