

commenced to walk along the railway westward towards Ailsa Craig, and about thirty rods from the Crossing was struck by a freight train (the persons in charge of which were not obeying the requirements of sec. 256 of the Railway Act) and killed.

The nearest public highway crossed by the railway was twenty-five rods east of the Crossing, and the nearest to the west was at a distance of over one mile from the Crossing. There was no way for passengers to get from or to either of these roads, except by going along the railway or by trespassing upon private grounds, which had been forbidden, and the defendants owned no lands at the Crossing except such as were taken for their lines. Passengers had been in the habit of coming to and going from the Crossing along the lines, without interference by the defendants.

Held, that the deceased was entitled to travel on his ticket from London to Lucan Crossing, and when he arrived there was at a place where he had a right to be.

2. That the defendants had made the crossing a "station" by selling tickets to it and receiving passengers at it, although there was no ticket nor telegraph office there.

3. That the defendants had power under the Railway Act to expropriate the land necessary to give ingress and egress to and from this station.

4. That the deceased, being lawfully at the station, had a right to egress from it, and, there being no other way, had a right, from necessity, to gain egress by the railway: and the defendants had impliedly invited the public to walk along the railway for such purpose; and the deceased was therefore lawfully upon the railway when he was killed.

5. That all persons are entitled to the benefit of sec. 256 of the Railway Act, whether travelling on a highway or not; and the omission by the defendants of the duty imposed by that section to ring the bell or sound the whistle at the highway crossing to the east of the station, was evidence of the neglect of a duty which they owed to the deceased, which entitled the plaintiffs to have the case submitted to the jury.

6. That a person walking on the railway by necessity or by the implied invitation or license of the defendants would not be liable to conviction under sec. 273.

Aylesworth, Q.C., for the plaintiffs.

Osler, Q.C., for the defendants.

FALCONBRIDGE, J., }
STREET, J. }

[April 22.

SPENCE v. GRAND TRUNK R. W. CO.

Statutes—Law Courts Act, 1896—Amendment—Procedure—Pending actions—Judgment not entered—Leave to appeal—Grounds.

By paragraph 7 of the schedule to the Law Courts Act, 1896, sec. 73 of the Judicature Act, 1895, was amended so as to enable a Divisional Court and the Court of Appeal, and any Judge thereof, to grant leave to appeal in cases where no absolute right to appeal exists, and where, under the law as it stood before the amendment, no such leave could have been obtained.