

We do not think that rule 218 has any application. It deals with the case of a train parting while in motion, but not with the case of a train being designedly cut in two in order that such an operation as that in which those in charge of Lawton's train were engaged, may be effected. The detached portion which is not to be moved or passed around, is plainly the detached portion of a train which has parted while in motion.

If there be such a duty as it was contended rule 213 creates, it must depend, not upon rule 213, but upon some other written rule, or the well-known practice adopted in the operation of the trains of the Grand Trunk Railway Company.

Upon the whole, we think that the trial was not a satisfactory one, and that there must be a new trial in order that all questions of fact necessary for determining the rights of the parties may be found by the jury, after proper instructions as to the construction to be placed on the written rules, to use the language of the Court in *Neilson v. Harford*, either "absolutely" or "conditionally."

We say nothing as to the question of the right of the defendants to have deducted from the damages assessed the amount of the accident insurance which the deceased carried, and which it is said was received by his widow.

The facts as to this insurance were not brought out fully at the trial, and we think it better not to express an opinion as to that question now on a hypothetical state of facts, or on the facts as stated in the affidavits filed by the defendants in support of their motion, especially as no additional expense and no inconvenience will be occasioned by taking that course, the deduction being a mere matter of calculation, if the defendants are right as to the law and the facts on this branch of the case.

The appeal will, therefore, be allowed, and a new trial had, and the costs of the former trial and of the appeal will be costs in the cause, unless the Judge before whom the action is retried otherwise directs.