

On the 14th of February, 1911, a train consisting of a snow-plough in front, an engine next, and a caboose or car used by the conductor and brakeman behind, was sent out.

An order called a train order was issued by the proper officials, and was read by the conductor, engine-driver, and a man named Weymark, who travelled in the plough with Gilbert Jones, the deceased, to the effect that the train was to proceed from the city of London to Guelph Junction, and there meet certain trains. It did so. One at least of the expected trains had arrived at Guelph Junction before this snow-plough train.

The proper semaphore red light signals, home and distance, were properly set at Guelph Junction station some time before the arrival of the snow-plough train, but, in entire disregard of them, it steamed into the station and collided with one of the trains it was to meet there, the latter being at the time engaged in getting from the main line into a siding. In this collision Weymark and Jones were both killed. An accident of this kind suggests the greatest want of skill or the utmost negligence in the working and management of this plough train. The employee whose duty it was to look out for the signals ahead, and to draw the necessary conclusions from them if observed, was either incapable of seeing them, or of drawing those conclusions from them if seen, or of taking the necessary action to secure the safe arrival of this train at its destination, or, being possessed of the skill, knowledge, and experience sufficient to enable him to discharge these various duties, he negligently omitted to perform them. Now, the defendant company gave no evidence at the trial.

The statement of claim bases the plaintiff's right to recover on the violation by the company of a statutory duty imposed upon them, namely, by putting in charge of this plough one Henry Weymark, who was merely a section foreman, or, as he would be styled in this country, a linesman, i.e., one whose business it was to see to the keeping in order of a portion or portions of the permanent way, and who had not passed the examination or submitted to the test required by the 5th of the orders of the Board of the Railway Commissioners of Canada of the 9th November, 1910, to be passed by and submitted to every person whom the defendant company should permit to "engage in the operation of trains or handle train orders."