

Taking as my guide the rule laid down in *Evans v. Astley*, 11 App. Cas. 674, I cannot find anything pointing to the probability of the plaintiffs' theory being the true explanation of this unfortunate man's death. I do not think there is any evidence which goes to indicate that the fireman would in the course of his duty be so far outside the extreme limit of the buffer beam as to bring his head into contact with the girder. Everything, it seems to me, points to the fact that in some unexplained way this unfortunate man fell from the train.

This leaves another aspect of the case, which, however, it is not necessary for me to consider. It was argued by Mr. Rose with much force that, as all agree that in the discharge of his duty the fireman would not need to be more than a foot beyond the line of the car, the railway company had discharged every possible duty they might owe to him when they gave a clearance of over 2 feet.

While the action fails for these reasons, I do not think I should award costs.

FALCONBRIDGE, C.J.K.B., IN CHAMBERS.

OCTOBER 23RD, 1914.

*DUMENKO v. SWIFT CANADIAN CO. LIMITED.

Alien Enemy—Action by, Begun before War—Residence in Hostile Country—Dismissal of Action—Security for Costs—Stay of Proceedings.

Motion by the plaintiffs for an order staying proceedings and cross-motion by the defendants for an order dismissing the action.

O. H. King, for the plaintiffs.

Gideon Grant, for the defendants.

FALCONBRIDGE, C.J.K.B.:—The plaintiffs are inhabiting and commorant (per Lord Ellenborough, C.J., in *Le Bret v. Papillon* (1804), 4 East 502, at p. 506) in Austria under the allegiance of the Emperor of Austria, between whom and our King a war has been commenced and is now being carried on. The plaintiffs are, therefore, enemies of the King. At the time when they brought

*To be reported in the Ontario Law Reports.