

The Divisional Court of three Judges, on appeal to it, unanimously refused to interfere, and on appeal to the Court of Appeal for Ontario, that Court of five Judges with only one dissenting, refused to interfere.

We are asked to reverse all this because some ingenious persons have suggested one thing and some another of which the most plausible possibility suggests the ordinary farm horses, not shewn to be of bad habits, may have boggled at a derrick somewhere near at hand, though not a particle of evidence (such as might have existed on the road, or tracks to indicate such a thing) or otherwise shewn to support the suggestion, if having foundation.

I cannot do so. I think the case of *Peart v. Grand Trunk R. Co.*, 10 A. R. 191, and in the Privy Council, reported in 10 O. L. R. 753, is most instructive, both as regards similarity of facts and circumstances, and how at this stage there should be some respect paid to the mass of judicial opinion to be overthrown by a reversal, such as asked here.

I think the appeal should be dismissed with costs.

HON. MR. JUSTICE DUFF:—I think there was evidence to support the finding of the jury that one of the statutory signals (the sounding of the whistle), was not given, and that this was the cause of the collision in which plaintiff's husband and daughter lost their lives.

There was a flag station situated about ten rods west of the crossing at which the train had usually to stop for trains advancing from the west. The practice was to give warning of the approach of the train to the station by a single blast of the whistle; and to give the statutory warning of the approach to the crossing by sounding four blasts at a point considerably nearer the highway. One witness when on the highway half a mile from the crossing heard a single blast proceeding as he thought from a point about a mile from the road. He heard no other signal from the train although he saw the train approaching and cross the highway. He says there was no reason why he should not have heard the whistle if it had sounded except that he was engaged in talking and not directing his attention to the train. This he says would equally apply to the whistle he did hear.

Another witness who at the time the train passed was at the station heard a single blast of the whistle, but cannot fix the place where it was blown. He says his attention was not specially directed to the train. Three other witnesses