REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

N.W.T.] [Nov. 27, 1905.

ANDREAS v. CANADIAN PACIFIC RY. CO.

Negligence—Finding of jury—Evidence.

A., as administratrix, brought an action against the defendants, claiming compensation for the death of her husband by negligence and alleged in her declaration that the negligence consisted in running a train at a greater speed than six miles an hour through a thickly peopled district, and in failing to give the statutory warning on approaching the crossing where the accident happened. At the trial questions were submitted to the jury, who found that the train was running at a speed of 25 miles an hour, that such speed was dangerous for the locality and that the death of deceased was caused by neglect or omission of the company in failing to reduce speed as provided by the Railway Act. A verdict was entered for the plaintiff and, on motion to the Court en banc to have it set aside and judgment entered for defendants, a new trial was ordered on the ground that questions as to the bell having been rung and the whistle sounded should have been submitted to the jury. The plaintiff appealed to the Supreme Court of Canada to have the verdict at the trial restored and the defendants, by cross-appeal, asked for judgment.

Held, IDINGTON, J., dissenting, that by the above findings of the jury the defendants were exonerated from liability on the other grounds of negligence charged, as to which they had been properly directed by the judge, and the new trial was improperly granted on the ground mentioned.

Held, also, that though there was no express finding that the place at which the accident happened was a thickly peopled portion of the district it was necessarily imported in the finding given above; that this fact had to be proved by the plaintiff and there was no evidence to support it; and that, as the evidence shewed it was not a thickly peopled portion the plaintiff could not recover and the defendants should have judgment on their cross-appeal.