

Justice of the Common Pleas, a stronger one than *Dublin and Wicklow Rv. Co. v. Slattery* (1878), 3 App. Cas. 1155, in which one or two, at all events, of the Law Lords expressed the opinion that that case was one in which the verdict of the jury was clearly against the weight of the evidence and one of them went so far as to say that it was as strong a case for saying that the verdict was against the weight of the evidence as he had seen.

Of the witnesses called by the plaintiff not one of them would testify that the signals were not given and in each case when the witness did not hear the signal he admitted that the signals might have been given without being heard by him on account of his attention being otherwise engaged.

On the other hand the whole body of evidence called by the defendants shewed compliance with the statutory requirements.

It was however, upon the first ground of negligence found by the jury that the judgment of the Court of Appeal as well that of the Divisional Court turned.

It is disputed that the sign post was not erected as required by the statute but was lying on the side of the road in the position where it had been placed by the contractors for the construction of the Chatham, Wallaceburg and Lake Erie Railway Company.

The appellants submit, however, that there is an absence of any direct evidence or of facts from which an inference may reasonably be drawn that the accident was directly occasioned by the absence of the sign post and that therefore the appellants cannot be held liable.

Not only is there an utter lack of evidence to establish that the accident was directly occasioned by the absence of the sign post as in the preceding paragraph pointed out, but the greater proportion of the plaintiff's evidence was to substantiate her case as originally pleaded, that the accident was occasioned by the derrick of the Chatham, Wallaceburg and Lake Erie Railway Company (which was lying on the roadside a short distance south of the appellants' line of railway) frightening the horses attached to the conveyance carrying the deceased and causing them to stop when they arrived upon the appellants' track.

With all respect, therefore, it is submitted that the whole case should have been withdrawn from the jury and a judgment of nonsuit granted and that the learned trial Judge should have held that there was no evidence or facts from