

vision to prevent injury to them, was, in my opinion, adopting and following a negligent system. What might reasonably have been expected to happen, and might easily have been averted, was what did happen. It was this negligent system of carrying on the work which, I think, occasioned the accident.

Reference to *Sword v. Cameron*, 1 Ct. Sess. Cas. (2nd series) 493; *Smith v. Baker & Son*, [1891] A.C. 325, at pp. 337 and 339; *Williams v. Birmingham Battery and Metal Co.*, [1899] 2 Q.B. 338; *Ainslie Mining and R.W. Co. v. McDougall*, 42 S.C.R. 420; *Brooks Scanlon O'Brien Co. v. Fakkema*, 44 S.C.R. 412.

I was referred by counsel for the defendants to the case of *Kreuzynicki v. Canadian Pacific R.W. Co.*, 5 O.W.N. 312, which is, I think, distinguishable. The work being done in that case was not work in connection with the general system of the railway's operation, but an isolated piece of work required to be done and which was being done under the direction of an apparently competent foreman.

The case of *Fairweather v. Owen Sound Stone Quarry Co.* (1895), 26 O.R. 604, was also referred to, but does not, in my opinion, assist the defendants. I quote from p. 607: "The manner of working the quarry ought to be known to the governing body of the corporation defendants, and they should be answerable if the system is dangerous or negligently conducted: *Rex v. Medley*, 6 C. & P. 292."

There will be judgment for the plaintiff for \$900 with costs of suit.

FALCONBRIDGE, C.J.K.B.

JANUARY 10TH, 1914.

HOME BANK OF CANADA v. MIGHT DIRECTORIES
LIMITED.

*Buildings—Party Wall — Failure to Establish — Evidence—
Easement—Injunction—Damages.*

Action for an injunction and damages in respect of a trespass by the defendants upon the wall of the plaintiffs' building in Church street, in the city of Toronto, to the north of land upon which the plaintiffs were building, and in doing so making openings in the wall and placing girders therein, asserting that the wall was a party wall.