

of the candidate for whom the voter intended to vote within the meaning of s. 46 of c. 70 R.S.

W. B. A. Ritchie, K.C., for appellant. Cluny, for respondent.

NOTE.—The decision of Meagher, J., in the above case is understood to have been confined to the point last noted.

Full Court.]

[Jan. 25.]

BELL v. INVERNESS COAL & RAILWAY CO.

*Employers' Liability Act—Operation of coal mine—Liability of company for negligence of employee.*

Under the system of operating the defendant company's coal mine, coal was brought to the surface by means of box cars, and at intervals what was termed a "rake of cars" was sent down to bring up men. In the latter case the rules of the company required the man in charge of the rake to give four raps upon the rope connecting the cars with the hoisting engine at the surface as a signal that men were on board, when the cars were raised at a much slower rate of speed than that employed in raising coal. The man in charge of the rake, in violation of the rules, gave only one rap upon the rope (the signal used when coal was being raised) and the cars being brought up at a great speed ran off the track, the accident resulting in the death of one man and serious injuries to another. In an action under the Employers' Liability Act, R.S. (1900) c. 179,

*Held*, affirming the judgment of the trial judge,

1. The case was within s. 3, sub-s. (e) of the Act relating to the negligence of persons in the service of the employer and having "charge or control of any points, signal—upon a railway, etc."

2. There was no such contributory negligence on the part of plaintiff in remaining upon the cars (there having been an opportunity of getting off at a stopping place) as would disentitle him to recover.

3. The principle *volenti non fit injuria* could not be invoked on behalf of the defendant company.

Mellish, K.C., for appellant. D. McNeil, for respondent.