

a ballast train moving westerly, and so injured that death resulted a short time after. The ballast train which struck the deceased was being moved by a locomotive at the rear end of the train, pushing it. Negligence is charged in that no warning was given to the workmen of the approach of the gravel train, nor was the train provided with a head-light or any light, nor was any bell sounded. Negligence by way of omission of alleged duty, and by negligent acts committed, is charged in almost every possible way.

This action is not against the railway company, but against the construction company, and the defendant company's admission that the train which struck the deceased was under the control of, and operated by, the defendant company, was put in.

I assume that the defendant company is not admitting, and is not in fact under, any greater liability in operating trains under arrangement with the railway company than the railway company would be if the deceased had been working for the railway company and the railway company had been operating its own trains.

At the close of the case the counsel for the defendant company moved for the dismissal of action. I reserved my decision, and submitted the following questions to the jury, and asked the jury to assess the damages contingent upon the plaintiff's right to recover:—

(1) Was the defendant company guilty of any negligence which caused the accident to the deceased Antonio Andriola?
A. Yes.

(2) If so, what was that negligence? A. Not sufficient light on the leading car and not enough precaution taken when approaching the boarding-cars.

(3) Could the deceased, by the exercise of reasonable care, have avoided the accident? A. No.

(4) Damages, \$1,000.

Upon the case, with the answers of the jury to questions 1 and 2, I am of opinion that the plaintiff is not entitled to judgment.

As to light on leading car: there is no duty cast upon a railway company to have a light upon a leading car.

Sections 275 and 276 are not applicable to this case:—

275. No train shall pass in or through any thickly peopled portion of any city, town, or village at a greater speed than 10 miles an hour, unless, etc.