

train, for they had not gone more than 25 feet before the engine struck their horse's head; so that undoubtedly they drove right in front of the approaching train.

The whistle was sounded as the train approached the station, but, according to the findings of the jury, the bell was not ringing immediately before the train reached the crossing, and no danger-whistle was blown between the station and the crossing.

In explaining the answer made by the jury, the foreman made it quite plain that they were not prepared to find that that negligence caused the accident. The foreman said "I could not go further than to say it might have prevented it."

Upon this, the plaintiffs failed. To succeed, they must establish not only negligence on the part of the defendant company, but that that negligence caused the accident. The jury were not satisfied that the negligence found did cause the accident.

The plaintiffs failed, not only upon the answers of the jury, but also because, on the undisputed facts, the whole occurrence was the result of their own negligence in attempting to cross without looking for an approaching train.

Action dismissed, with costs if demanded.

MIDDLETON, J.

OCTOBER 20TH, 1915.

*RE OWEN SOUND LUMBER CO.

Company—Winding-up—Directors — Misfeasance — Winding-up Act, R.S.C. 1906 ch. 144, sec. 123—Scope of—Procedure—Irregularity in Election of Directors—De Facto Directors—Liability—Payment of Dividends out of Profits—Costs.

Appeals by the liquidator of the company—in liquidation under the Winding-up Act, R.S.C. 1906 ch. 144—from the finding of the Local Master at Owen Sound that certain of the directors of the company were not liable for misfeasance in office.

The appeals were heard in the Weekly Court at Toronto.

D. Robertson, K.C., and G. H. Kilmer, K.C., for the appellant.

C. A. Masten, K.C., and W. H. Wright, for Wesley Sheriff and W. H. Merritt, respondents.

C. A. Moss, for J. M. Kilbourn, respondent.

MIDDLETON, J., pointed out that the misfeasance section—123—of the Winding-up Act was one which did not create liability,