

The claim to recover as at common law is, of course, based upon the 5th and 6th questions and answers. But the deceased did not lose his life because of the use of a defective system of trestles, or of using or not using a combination of trestles and jack, but because of the sinking of the leg of a particular trestle owing to its insufficient foundation.

That is the negligence found by the jury in the first 4 questions and answers before set out, and is the conclusion warranted by the evidence. There was uncontradicted evidence that plenty of proper material to make a sufficient foundation was supplied by the defendants, and the jury found that it was the duty of the foreman, Mr. Warren, to see that the car was sufficiently supported. This makes a complete cause of action under the Act, without dragging in the rather vague question of "system," which, in my opinion, had really nothing to do with the case.

Upon the question of the amount of the damages under the Act, there was, I think, evidence from which the jury might properly find as they did. The limit is not 3 years' wages according to the rate which the workman was himself receiving, but the estimated earnings of a person in the same grade employed in the like employment: see R. S. O. 1897 ch. 160, sec. 7. The wage paid to the workman himself is of course evidence of the fact to be proved, but so would be evidence of what is paid to other workmen in the same grade employed in the like employment. The deceased was apparently the only workman employed in this particular work at Toronto Junction. But Mr. Vose, also a pipe fitter in the employment of another railway company at the Union Station in Toronto, was called by the plaintiffs, and his evidence, apparently accepted as trustworthy by the jury, would have justified an even larger sum than that found by them.

The judgment should in my opinion be reduced to one for \$2,000, to be divided equally between the two plaintiffs, the infant's share to remain in Court until further order, and the appeal should be otherwise dismissed. And there should, I think, under the circumstances, be no costs of the appeal.