

ployees of the Toronto Hamilton and Buffalo Railway Company to keep off their right of way.

Whether the deceased was a workman of the Canadian Pacific Railway Company and under the direction of a man to whose orders the deceased was bound to conform, or not, makes no difference to the Toronto Hamilton and Buffalo Railway Company. The deceased was not an employee of the Toronto Hamilton and Buffalo Railway Company; and as to these defendants the action must be dismissed.

Upon the answers of the jury affecting the defendants the Canadian Pacific Railway Company, I am of opinion that the plaintiff is entitled to judgment against that company.

The deceased was, in my opinion, at the time of the accident a workman in the employ of the Canadian Pacific Railway Company. He was then returning from the work of the day to the place provided by these defendants, to remain over night. He had the tools of his trade and for his work in his possession. It was intended both by the deceased and his employers that he should continue work for these defendants on the following and other days. The sleeping-car was provided by those defendants for the deceased and other workmen similarly employed. Ashby and Brunker were persons in the employ of the Canadian Pacific Railway Company, having charge of the deceased and directing him as to his work and the place where it was to be performed. These were persons to whose orders the deceased was bound to conform. These persons assumed that they had the right to go through the opening in the fence and to go upon the right of way of the defendants the Toronto Hamilton and Buffalo Railway Company and to walk along the tracks.

As between the deceased and the Canadian Pacific Railway Company the deceased was rightfully upon the track. He was invited to go with those over him, and by them, to this place of danger. There was no warning to the deceased by his boss of any danger.

So far as appears, the deceased did not know that he was upon the tracks of the Toronto Hamilton and Buffalo Railway or upon any right of way other than that of his employers. There was, in my opinion, negligence on the part of those servants of the Canadian Pacific Railway Company who were over the deceased, and the accident occasioning the death of the deceased was caused by his conforming to the instructions given to him. The "boss" led the way, the deceased followed, and the accident happened by reason of his following instructions.