

Then a farmer who was living some forty rods distant from the railway track in his house, deposed that he did not hear the sound, but I think the fair effect of his evidence was that he himself thought it well might be that the signals were given and that he was not paying attention or listening.

It may be that there was some evidence which could not be withdrawn from the jury, but the case seems to me a much stronger one, if, as I have said, it depended upon that issue having been properly found in favour of the plaintiff upon which a new trial ought to have been directed, than the case of the *Dublin and Wicklow Rv. Co. v. Slattery* (1878), 3 App. Cas. 1155, and in that case one or two, at all events, of the Law Lords expressed the opinion that that case was one in which the verdict of the jury was clearly against the weight of the evidence, and one of them went so far as to say that it was as strong a case for saying that the verdict was against the weight of evidence as he had seen.

It is possible that if the case had turned solely upon the answer to that question, we might have granted a new trial. We express no opinion as to that. It is sufficient to say that upon the first ground there was evidence upon which the jury might properly have found in favour of the respondent, and that being so, the appeal fails and must be dismissed.

The appeal to the Court of Appeal is reported in 15 O. W. R. 694; 1 O. W. N. 637.

The appeal to the Supreme Court of Canada was heard by HON. MR. JUSTICE GIROUARD, HON. SIR LOUIS DAVIES, J., HON. MR. JUSTICE IDINGTON, HON. MR. JUSTICE DUFF, and HON. MR. JUSTICE ANGLIN, on 22nd and 23rd November, 1910.

Fred. Stone, for the appellants. It is submitted that the Divisional Court was right in holding that, with regard to the second ground of negligence found by the jury, there was no evidence to go to the jury that that in any way caused or contributed to the happening of the accident.

As to the third ground of negligence found by the jury—it is also submitted that there was no reasonable evidence to be submitted to the jury that there was an absence of compliance with the statutory requirements in that respect and that the case is, as pointed out by His Lordship the Chief