

"Now I may be asked: which of the two versions should be given preference to.

"Relying upon the positive evidence of Daveluy, the fireman, who being in the engine's cab was best situated to know what Heather did, I will answer, that in my opinion the version I have referred to last is the true one.

"I am satisfied that when the semaphore was passed and even before it was reached Heather had done all that which was within power to do in order to slow down his engine and that no blame can be attached to him.

"The failure to reduce the speed was due entirely to the deficient working of the hand-brakes such deficiency resulting from their defective construction or else from the inability of the brakeman to handle them or even from his neglect to do his duty at all. The fact that the brakes were put upon three freight cars only and that the other two as well as the tender were left unattended to would seem to justify this last statement.

"With those facts before me I cannot help but concluding that the Company-Defendant should be held responsible.

"(See *Miller vs The Grand Trunk Railway Company, The Law Times, Vol. XC. IV*— March 1906 to August 1906 page 231 in which the accident there related had proceeded from a similar cause).

"I need not add that when dealing with the facts I have just referred to as constituting the second alternative the circumstance of the showing up of the green light as a signal of a nature to deceive the man on board of the incoming train has no longer any importance. As Heather could not bring his train to a standstill it is clear that he could not help going right on whether a green or a red light was shown, or whether there were obstacles on the road or not.