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JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

AUGUST 1ST, 1913.

JONES v. CANADIAN PACIFIC RW. CO.

Negligence—Death of Fireman on Snow Plough—Employment of Incompetent Signalman—Breach of Statutory Duty—Common Employment no Defence—Charge to Jury—Alleged Misdirection to be Read as Whole—Absence of Direct Evidence as to Proximate Cause—Right of Jury to Rely on Inferences.

Plaintiff was the widow and administratrix of Gilbert Jones, a locomotive fireman employed by defendants, killed by a collision between a snow-plough upon which he was riding and another train. The snow-plough was, as far as the giving of the necessary signals was concerned, in charge of a section foreman of no experience and who had never passed any tests for fitness. This was a violation of an order of the Board of Railway Commissioners. Defendants admitted liability under the Workmen's Compensation Act and paid into Court $2,000. CLUTE, J., gave judgment in favour of plaintiff for $6,000 and costs upon the findings of a jury.

COURT OF APPEAL, 22 O. W. R. 439; 3 O. W. N. 1404, *held*, that the findings of the jury were inconclusive and the Judge's charge misdirected the jury insomuch as he did not advise them that the mere breach of the statutory duty did not render defendants liable, but that in addition there must be injury to the deceased resulting from such breach. A new trial was ordered.

PRIVY COUNCIL *held*, that the defence of common employment was no defence when the negligent employe was selected in breach of a statutory enactment.

Johnson v. *Lindsay*, [1891] A. C. 382, and other cases referred to.

That taking the Judge's charge as a whole there was no misdirection therein.

Clark v. *Molyneux*, 3 Q. B. D. 237, 243, referred to.

That while there was no direct evidence that the inefficiency of the section foreman in charge of the signals was the proximate cause of the accident, yet the jury were entitled to make such a finding, the logical inference to be drawn from the circumstances, constituting evidence of such fact.

Ayles v. *S.-E. Rw. Co.*, L. R. 3 Ex. 146. *McArthur* v. *Dominion Cartridge Co.*, [1905] A. C. 72, referred to.

Appeal allowed with costs and judgment of trial Judge restored.

Appeal and cross-appeal by special leave from a judgment of the Court of Appeal for Ontario dated the 18th June, 1912, 22 O. W. R. 439; 3 O. W. N. 1404, setting aside the