

cepted McKay's statement as to the position of the barrow, it could not possibly be that the deceased fell from the west runway. It is not suggested that the death was not due to accident.

The sole question is as to how the accident happened.

It is well-settled that, where there is a conflict or doubt as to the proper inference to be drawn from the facts in proof, or, if the evidence is such that the jury might reasonably come to a conclusion in favour of the plaintiff or might reasonably draw a contrary inference, the case is for the jury to decide. I agree with the Divisional Court that facts were proved from which the jury might reasonably conclude that the cause of death was the fall of the deceased from the north runway. And I have no difficulty in also agreeing that there was in the testimony quite sufficient to justify the jury in finding that the north runway, constructed where and in the manner shewn by the evidence, was dangerous to persons using it for the purposes to which it was put.

It is to be gathered from the evidence of Bathurst, the foreman in charge, that, when the work of putting on the concrete was first begun, the men used the wide south runway for wheeling the loaded barrows, returning to the mixer platform by the narrow north runway. But, as the work progressed from the south end of the abutment further north, the action was reversed, without any corresponding change in the width of the north runway. The jury might very fairly conclude that the original purpose of the north runway was as a return way, and this accounted for its narrowness as compared with the south runway, for it would probably be safe enough as a return way, but the use of it for loaded barrows was an entirely different matter.

And I am unable to see in what respect it was necessary to aid the jury further than they were aided by the evidence of the experience of others in regard to the safety or want of safety of a construction of the nature of the runway in question, when used for the purposes to which it was put.

In my opinion, the judgment of the Divisional Court ought not to be disturbed.

GARROW and MACLAREN, JJ.A., were of opinion, for reasons stated by each in writing, that there was evidence of negligence which could not have been withdrawn from the jury, and that the jury's finding could not be disturbed.

MEREDITH, J.A., and RIDDELL, J., were of opinion, for reasons stated by each in writing, that the case should not have been