

the small part at that, passing up to the water-tower. The negligence was the same all through, up to the tower and on to the canal: the engineer was still passing with his train the signal set against him; and, as I have already pointed out, his partial passing up to the tower, to take water, was not breach of any duty in regard to safety at the bridge.

The engineer was flagrantly disregarding his duty in respect of safety at the bridge from the moment he put the train in motion at the water-tower until he drove his engine over the bank of the canal; and the jury's finding is not only wide enough to cover all such negligence, but would have no evidence to support it if it were to the contrary. To say that the engineer's duty ceased when he came to the tower because the bridge signal was then a short distance behind the engine is surely childish—that he was relieved from the paramount duty of seeing that he had the signal to cross, a duty fraught with such great danger if disregarded—simply because he would have to look back, while the engine was standing still, and look back a comparatively few feet only, instead of looking forward, to get his signal.

I would allow the appeal and restore the judgment of the trial Judge.

HON. SIR CHARLES MOSS, C.J.O., HON. MR. JUSTICE MACLAREN and HON. MR. JUSTICE MAGEE, concurred.

*Appeal allowed.*

HON. MR. JUSTICE RIDDELL.

NOVEMBER 9TH, 1912.

RICKART v. BRITTON MFG. CO.

4 O. W. N. 258.

*Action — Motion to Stay — Non-payment of Interlocutory Costs — Vexatious Proceedings — Principle Involved.*

RIDDELL, J., on the application of defendants, stayed the action until payment of the costs of two interlocutory motions as ordered, holding that the motions had been of a vexatious character.

An action may be stayed in the discretion of the Court for non-payment of interlocutory costs where the action is vexatious or where plaintiff, in the course of it, acts vexatiously towards defendant.

*In re Wickham*, 35 Ch. D. 272; *Graham v. Sutton* (1897), 2 Ch. 367; *Stewart v. Sullivan*, 11 P. R. 529; *Wright v. Wright*, 12 P. R. 42, referred to.