

The facts in this case did not create a duty towards the deceased. He had no right to go on the railway portion of the bridge. Section 180 (d) of the Railway Act of 1903 was passed "to prevent anything falling from the railway into such canal or water or upon the boats, vessels, or persons navigating such canal or water," and not to ensure safety to any one straying by mistake or otherwise on the bridge.

Reference to *Gorris v. Scott* (1874), L.R. 9 Ex. 125, and other cases.

The appeal should be allowed and the action dismissed; it was not a case for costs.

MULOCK, C.J.Ex., agreed with CLUTE, J.

RIDDELL, J., read a judgment in which he discussed the law and facts at some length, and concluded that there was no breach of any statutory or common law duty for which an action would lie. The appeal should be allowed.

SUTHERLAND, J., agreed in the result.

KELLY, J., read a judgment, in which, after a full discussion of the facts and the law, he stated his conclusion that the findings of the jury did not support the judgment in the plaintiff's favour.

*Appeal allowed.*

SECOND DIVISIONAL COURT.

NOVEMBER 25TH, 1918.

DAVIS v. WHITTINGTON.

*Vendor and Purchaser—Agreement for Sale of Land—Action for Instalment of Purchase-money—Misrepresentations by Agent of Vendor—Failure to Prove—Undertaking to Resell—Acquiescence—Ratification—Evidence.*

Appeal by the plaintiff from the judgment of the County Court of the Counties of Lennox and Addington dismissing the action and allowing the counterclaim of the defendant.

The action was by the vendor of land in Saskatchewan to recover an instalment of the purchase-money and interest; and the counterclaim was for cancellation of the agreement of sale and purchase and the return of all money paid by the defendant under the agreement.