

railway track they balked at a large derrick improperly placed by the workmen of another company originally joined in the action as a party defendant, along and indeed partly upon the highway, and stopped, with the result that both horses and the parties in the carriage were all killed by the rapidly approaching express. The evidence does not enable anyone to determine which one of several possible causes of the accident was the real one. One inference or conjecture is as reasonable as the other. In fact the baulking of the horses at the derrick when they were on the railway crossing was the one put forward by plaintiff and her witnesses during the early part of the trial. A good deal of evidence was given in support of it, but the trial Judge dismissed the action as against the parties defendant who had improperly placed and kept the derrick where it was and allowed the case to go to the jury as against the appellant railway company. Whether he was right in doing so is not for us to decide. The evidence shewing the derrick to have been a probable cause of the accident remained, and, of course, went to the jury in the trial against the railway company. I am no more able on this evidence than I think the jury was, to decide which inference as to the cause of the accident is most probably the true one or that one is more probable than another. The evidence is insufficient to enable anyone to do more than guess.

In the absence of any direct proof of the negligence charged causing an accident, an inference, if a fair one, can be made from all the proved facts that it was caused by such negligence, but it must be such an inference as excludes another inference equally fair not involving defendant's liability. If it does not so exclude any such other inference, it remains pure conjecture which is not, of course, sufficient. To attribute the deaths of the parties in this case to the absence of the signboard might be supported if that attribution was a fair inference from the proved facts, and the only fair inference, but when there are other inferences equally reasonable which can be drawn, not involving defendants' liability, the cause of death passes away into the region of conjecture only.

*McArthur's Case*, 1905 A. C., p. 72; *Wakelin's Case*, 12 A. C. 41; and *Hainer's Case*, 36 S. C. R. 180, are good illustrations of these points.

I would allow the appeal and dismiss the action with costs.