

A special, consisting of 35 freight cars, a caboose, and the engine and tender in charge of the deceased, left Fort Erie about 9.45 p.m., proceeding westerly. When it arrived near the drawbridge the signals were set against the train. The engineer blew the necessary blasts with the whistle, but did not get a signal to advance. He then said to his fireman—the semaphore remaining set against him—“We will fill the tank up;” and proceeded for that purpose to the stand pipe, which is situated between the semaphore and the bridge, thus passing the semaphore, which was still set against him. His duty, according to the printed instructions put in, was to detach the engine from the train when of over 15 cars, as this was, when about to take water. This he did not do, but, instead, advanced with the whole train until the engine was at the standpipe, about 70 feet in advance of the semaphore. While engaged in taking water, and apparently without again looking at the semaphore, he signalled to the conductor—who was some 1,200 feet away, at the rear of the train—“I am ready to proceed;” to which the conductor replied “All right.” The train at once proceeded, and in less than five minutes the catastrophe had occurred.

The signals from the engine were given by whistling; those from the conductor by means of the lit-lantern which he carried.

The drawbridge was properly open for the purpose of passing a boat upon the canal.

The rules of the defendants were put in, and Nos. 22, 52, 59, 60, 213, 232, and 233, were specially referred to at the trial and before the Court of Appeal.

Rule 22, under the heading “Conductors, Baggage-men, and Brakemen,” says: “The train is entirely under the control of the conductor, and his orders must be obtained except where they are in violation or conflict with the rules and regulations, or plainly involve any risk or hazard to life or property, in each of which cases all participating will be held alike accountable.”

Upon the heading, “Engine Man,” rule 62, says: “. . . they must obey the orders of the conductor of the train in regard to starting, stopping, and switching cars, speed, and general management of the train, unless they endanger the safety of the train or require violation of the rules.” Rule 59: “They must obey all signals given, even if they think such signals unnecessary. When in doubt as to the meaning of a signal they must stop and ascertain the cause, and