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No. 32.

COURT OF APPEAL.

APRIL 21ST, 1911.

GRIFFITH v. GRAND TRUNK R.W. CO.

Railway—Injury to and Consequent Death of Person Crossing Track—Highway Crossing—Neglect to give Statutory Signals—Cause of Injury—Place Where Accident Occurred—Finding of Jury—Connection between Neglect and Result—Proper Inference—Evidence.

Appeal by the defendants from the judgment of MIDDLETON, J., at the trial, in favour of the plaintiffs, upon the findings of a jury. The facts are stated in that judgment, which is reported ante, p. 252, and in the judgment of MOSS, C.J.O., infra.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

D. L. McCarthy, K.C., for the defendants.

W. M. McClemon, for the plaintiffs.

MOSS, C.J.O.:—This is an action by the widow and children of one James A. Griffith to recover damages for his death. The deceased, who was an employee of the Hamilton Steel & Iron Co., was on the evening of the 29th of December, 1909, found lying dead outside of the south rail of the southern track of the defendants' main line between Niagara Falls and Hamilton. His body was found about 350 yards east of a highway called Kenilworth Avenue which is crossed by the railway. Two passenger trains bound east towards Hamilton had passed the crossing. His body was found within a few minutes after the last of these trains had crossed, and from the appearance of the remains, and other evidence, there is no doubt that he was run down by either one or the other of these two trains. There was no eye-witness of the accident, and when last seen alive he was going home from his work at the Hamilton Steel & Iron Com-