

caught between two converging rails, and, being unable to extricate it in time, was run over by the slowly backing train. The theory of the plaintiff was that, at the time, the deceased was crossing back to his proper side of the train after having set the switch into track 10, and that the train was negligently backed upon him without a signal. A further ground was, that there should have been more help to carry out the operation safely.

The jury answered questions: (1) Were the defendants guilty of any negligence which caused the accident? A. Yes. (2) If so, in what did such negligence consist? A. Neglect of help. (3) If the defendants were guilty of any negligence, could the deceased, by the exercise of reasonable care, have avoided the consequences of the defendant's negligence, and, if so, how? A. No; his duty compelled him to cross the track to give a signal. (4) Was the deceased guilty of any negligence which caused or contributed to the accident? A. No. (5) If so, in what did such negligence consist? (6) What damages, if any, do you award the plaintiff. A. \$2,500.

The appeal was heard by Moss, C.J.O., OSLER, GARROW, and MACLAREN, JJ.A.

D. L. McCarthy, K.C., and W. L. Scott, for the defendants.

A. E. Fripp, K.C., for the plaintiff.

The judgment of the Court was delivered by GARROW, J.A. (after setting out the facts as above):—The effect of the findings is to exclude the other items of alleged negligence. And the question on this appeal is, was there any evidence upon which the jury could reasonably arrive at the conclusion which they did?

The meaning of the expression "neglect of help" is, I assume, that the defendants failed in their duty to furnish enough men to enable the operation to be carried on with a reasonable degree of safety. And it clearly refers to the absence of the foreman at the moment of the accident, he having gone ahead, as before mentioned.

The question of what is the proper number of men to constitute a train crew working in a yard, as these men were, and what is the safe and proper mode of carrying on the operation then in progress, is not one upon which a jury can be permitted to trust to their own knowledge or lack of knowledge, or, in other words, merely to conjecture. There must be evidence from witnesses duly qualified to express an opinion, from whose testimony the desired inference of negligence can reasonably be drawn—otherwise, of course, the case fails.