Second Divisional Court.   November 25th, 1918.

*WALSH v. INTERNATIONAL BRIDGE AND TERMINAL CO.

Negligence—Death of Plaintiff's Husband by Falling from Railway Bridge—Evidence—Findings of Jury—Duty Owing to Deceased —Common Law Duty—Railway Act, 1903, sec. 180 (d)— Orders of Dominion Board of Railway Commissioners—Statutory Duty.

Appeal by the defendants from the judgment of LENNOX, J., 13 O.W.N. 411, upon the findings of a jury, in favour of the plaintiff.

The appeal was heard by MULOCK, C.J.Ex., CLUTE, RIDDELL, SUTHERLAND, and KELLY, JJ.

W. N. Tilley, K.C., for the appellants.

R. T. Harding and C. R. Fitch, for the plaintiff, respondent.

CLUTE, J., in a written judgment, said that the plaintiff was the widow of William Walsh, who came to his death on the 27th March, 1917, by falling through the railway bridge at Fort Frances. She sued on behalf of herself and three infant children. The jury found negligence on the part of the defendants, and assessed the damages at $5,000, for which amount the trial Judge pronounced judgment in the plaintiff's favour.

After stating the facts, the learned Judge (CLUTE, J.) said that the Dominion Board of Railway Commissioners, on the application of the defendants under sec. 251 of the Railway Act, made an order, on the 22nd January, 1912, giving the defendants leave to construct and operate the bridge and railway, and giving directions as to grade and protection by gates etc. On the 8th March, 1915, the Board made a further order, reciting that there was to be a re-arrangement of the tracks, and directing the placing of watchmen to protect the crossing, pending the re-arrangement. It was said that nothing was done towards re-arrangement; but it was not by reason of the defendants' neglect of duty in that regard that the plaintiff's husband met his death.

The defendants were incorporated by 4 & 5 Edw. VII., ch. 108 (D.), sec. 16 of which provides that the Companies Clauses Act shall not apply; sec. 17 provides that certain sections of the Railway Act of 1903 shall apply.