

horses: *The Bernia*, 12 P. D. 58; *Mills v. Armstrong*, 13 App. Cas. 1, referred to in *Flood v. Village of London West*, 23 A. R. 530.

The jury are justified in drawing inferences unfavourable to the defendant when the company omitted to call such of their employees as were present at the accident and might throw some light on it: *Wallmann v. Canadian Pacific Rv. Co.*, 16 Man. R. 82, 6 Can. Ry. Cas. 229; *Green v. Toronto Rv. Co.*, 26 O. R. 326.

The omission of the company to take any precaution which they are directed by statute to take, would in all cases be evidence of negligence in favour of the person who is injured by the neglect of the company to take the precaution: *Grand Trunk Rv. Co. v. Hainer*, 36 S. C. R. 180, 5 Can. Ry. Cas. 59.

HON. MR. JUSTICE GIROUARD (23rd December, 1910):—I think that this appeal should be dismissed for the reasons stated in the Court below.

HON. SIR LOUIS DAVIES, J. (*dissenting*):—The judgment appealed from is based on the negligence found by the jury of the absence of the statutory signboard required to be maintained by the railway company at the level crossing where the accident occurred. I think the weight of evidence is against the jury's finding of the absence of statutory signals, and that the judgment, if sustained at all, must be so on the finding of the absence of the signboard on which the Appeal Court relied.

Owing to the death of all the parties in the waggon, and the darkness which prevented anyone else seeing what occurred, the causal connection between that negligence and the death of the parties in the waggon is a matter of pure inference only.

I have read the evidence carefully through and if the only reasonable inference to be drawn from the facts was that the deaths of the unfortunate parties were caused by the statutory neglect of the defendants in not having maintained these signboards, I would not quarrel with the judgment. But it appears to me that it would be just as reasonable to infer from the proved facts either that the deceased parties, seeing the train approaching as they could hardly have helped doing, attempted to cross in front of it, but through a miscalculation of time and distance on the part of the driver, failed, and were killed, or that at the moment the horses reached the