

(2) Because there was no evidence that the failure to employ a "look-out man" caused the accident.

(3) Because, upon the undisputed facts, the only proper inference was that, knowing the dangerous nature of the employment, the deceased voluntarily undertook the risk.

(4) Because, upon the undisputed facts, the accident was solely caused by negligence of the deceased himself. The man was in a position of safety so long as he did not place himself in the way of the moving cranes—he knew his peril, and it was his duty not to forget the passing cranes, and so place himself in a position where death was almost certain. Forgetting may not be negligence in some circumstances, but where a man voluntarily places himself in a position calling for the exercise of extreme care in some particular respect, he must not forget—or it is his own negligence that causes the accident.

The action will be dismissed as to the steel company upon the answers of the jury, and as to the bridge company for the reasons above given—in the circumstances without costs.

The issue between the defendants now becomes a matter of costs only. I dismiss the claim for indemnity with costs: (1) because, there being no liability to the plaintiff, there can be no claim over; (2) because the agreement between the defendants does not give a right of indemnity when the bridge company is itself negligent, and the claim of the plaintiff (if any) must be based on negligence.

The costs now awarded do not cover any costs incurred in resisting the plaintiff's claim against the steel company.

MIDDLETON, J.

NOVEMBER 17TH, 1910.

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—Finding of Jury—Connection between Neglect and Result—Proper Inference—Evidence.

Action for damages for the death of one Griffith, while returning from his work to his home on the 29th December, 1909, by being run down by a train of the defendants at a highway crossing.