

severance of one portion of the farm from the other. He generally secures a "farm crossing" as it is called, so that the separated portions of his farm may not be completely isolated from each other, but in its use he must recognize not only the superior right of use by the railway company for which it has paid, but the peculiar character of that use, its enormous rate of speed, the difficulty of checking it, and the responsibility for the safety of human life which its service entails, and the principle should be clearly laid down and maintained by the courts, that in the careless use of such crossings, the adjoining proprietor not only deprives himself of redress for injury caused to himself or his property, but incurs the fearful responsibility of loss of life and property to the railway company, its employees and patrons.

Nor can we adopt the text of the judgment as to the obligation on the part of railway companies to use Westinghouse brakes upon either freight or mixed trains. Such a brake upon the passenger cars alone, in the rear end of such a train, would be useless, unless it formed part of a continuous system extending from the locomotive, by which this kind of brake is operated. Nowhere in this country, has that expensive system been applied to freight trains, nor has the railway committee of the Privy Council imposed that burden upon railway companies, although power to dictate as to such appliances has been specially conferred upon it by section 243 of the Railway Act. In the case under consideration the railway employees appear to have used all reasonable precautions, and made all possible efforts to stop the train, as soon as it was apparent to them that there were horses upon the track and that they were caught in the culvert, as in a trap, so that they could not escape; in fact the law of self preservation secured the observance of all those precautions, as the lives of the employees were seriously jeopardized by the impending accident. A charge of heartlessness and indifference is made against them because they did not stop and assist in the removal of the dead horses after the accident. They saw that this duty was being performed by the track laborers, and they discharged a more pressing duty toward the passengers upon their train, by proceeding, so as to avoid risk of being run into by a train which was following them at only a few minutes' interval upon a down grade.

We think that the appeal should be maintained and the action dismissed.

Judgment reversed, Baby, J., dissenting.