

Moss, C.J.O.:— . . . Upon all the facts disclosed in evidence, and having regard to the circumstances under which the plaintiff met with the injury, I think that, if I had tried the case without a jury, I should have had no hesitation in holding that the plaintiff had not succeeded in fastening liability upon the defendants. But, the case having been submitted to the jury, and their answers to the questions being now before us, there arise for consideration the questions: (a) whether there was evidence proper to submit to the jury upon the question of negligence on the part of the defendants; and, if so (b), whether, upon the answers, judgment should not have been entered for the defendants. . . .

[The learned Chief Justice then explained at length the circumstances which led to the plaintiff's injury.]

Upon the whole, although scanty, there was enough at the close of the plaintiff's case to justify the refusal to enter judgment for the defendants. But, at the close of the whole case, when it had been proved, and indeed admitted, that the car was not the defendants' property . . . other questions arose as to the liability of the defendants for the failure of this car to comply with the requirements of sec. 264 of the Dominion Railway Act, applicable to couplers and ladders on box freight cars. The car had been received in the ordinary course of the obligation to interchange traffic, imposed by sec. 317 of the Railway Act. It had been inspected in due course and passed, in accordance with the ordinary practice, by inspectors whose competency was not questioned. . . . It is shewn that there is no rule, statutory or otherwise, requiring that there shall be ladders on the ends as well as on the sides of box freight cars used on railways operated in the United States. The car was provided with automatic couplers; but the complaint is as to the length of the lever or coupling-rod. There is no express provision in the Railway Act prescribing the length of the lever; but the testimony for the defendants shewed that the end of the lever on the car extended to within 15 or 16 inches of the side, instead of 32 or 33 inches, as the plaintiff stated. The modern Canadian lever is made to extend out to the side, or to within at least 8 inches; but cars from the United States, with the end of the lever 15 or 16 inches from the side, are admitted and passed in the usual and ordinary course of inspection. Unless the provisions of sec. 264 apply, there appears to be no statutory or other rule against the transport of foreign box freight cars, although they do not comply in every respect with the Railway Act. . . .