In answer to questions, the jury found: (1) that the death was caused by the negligence of the defendants; (2) that such negligence consisted in "not ringing the bell on the engine or blowing the whistle;" (3) that the deceased could not, by the exercise of reasonable care, have avoided the accident; and they assessed the plaintiff's damages at $2,500.

On these answers the trial Judge pronounced judgment for the plaintiff for $2,500 and costs.

The appeal was heard by MULOCK, C.J. Ex., MAGEE and HODGINS, JJ.A., and MASTEN, J.

D. L. McCarthy, K.C., for the appellants.

E. G. Porter, K.C., and W. Carnew, for the plaintiff, respondent.

MASTEN, J., reading the judgment of the Court, said, after stating the facts, that one of the contentions of the appellants was, that there was no evidence to connect the locomotive engine alleged to have caused the death with the defendants or their servants or agents. The learned Judge said that the lack of formal evidence upon this point was due to a slip, and that, unless the defendants would now admit that the engine was being operated by them, the plaintiff should have leave to adduce evidence before the Court to establish the fact.

It was also contended that the trial Judge should have withdrawn the case from the jury. If counsel for the appellants meant to suggest that the cases upon which he relied established in this Province a doctrine different from that applied in England since Bridges v. North London R.W. Co. (1874), L.R. 7 H.L. 213, Dublin Wicklow and Wexford R.W. Co. v. Slattery (1878), 3 App. Cas. 1155, and Metropolitan R.W. Co. v. Wright (1886), 11 App. Cas. 152, the learned Judge did not agree with the suggestion. The contrary was established by such cases as Morrow v. Canadian Pacific R.W. Co. (1894), 21 A.R. 149; Scriver v. Lowe (1900), 32 O.R. 290; Makins v. Piggott (1898), 29 Can. S.C.R. 188; Toronto R.W. Co. v. King, [1908] A.C. 260; Champaigne v. Grand Trunk R.W. Co (1905), 9 O.L.R. 589, 599; Peart v. Grand Trunk R.W. Co. (1886), 10 O.L.R. 753.

The learned Judge distinguished the three cases chiefly relied on for the appellants: Johnston v. Northern R.W. Co. (1873), 34 U.C.R. 432; Wabash R.R. Co. v. Misener (1906), 38 Can. S.C.R. 94; Grand Trunk R.W. Co. v. McAlpine, [1913] A.C. 838.

Reference also to Grand Trunk R.W. Co. v. Haines (1905), 36 Can. S.C.R. 180; Ramsay v. Toronto R.W. Co. (1913), 30 O.L.R. 127; Beven on Negligence, 3rd ed., p. 135; Halsbury's Laws of England, vol. 21, pp. 443, 444; Coyle v. Great Northern R.W. Co. of Ireland (1887), 20 L.R. Ir. 409.