

to ask the jury to amplify or supplement these answers. The failure of the men in charge of the shunting train to warn is, I think, negligence of fellow servants, and imposes no common law liability.

The plaintiff relies on the lack of arrangement whereby warning would be given, as constituting a defective system importing common law liability. Mr. MacMurchy contends with much force that upon the record it is not open to enter into this enquiry. He may be right in this, although para. 7 of the statement of claim may be read thus: "The said failure (i.e., the failure to give notice) was negligence for which the defendant company are responsible;" and this may be regarded as a sufficient allegation that the failure to give notice amounted to something making the company liable at common law.

I do not think it can be regarded as a defect in the works, ways, etc.; and, rather than rest the case upon the narrow ground of the pleader's allegation, I prefer to consider the situation upon the assumption that the finding of the jury is properly before me for consideration.

This being so, I have arrived at the view that this does not constitute common law liability. The railway, as a railway, was perfect. The system of operation as a railway was entirely satisfactory. The work which was undertaken formed no part of the general system. It was a mere piece of work which had to be undertaken on that particular occasion, quite subsidiary, although ancillary, to the operation of the road; and all work of that class was entrusted to a gang of labouring men under a competent foreman. He had the right to send them anywhere in the yard to do any work required to be done and the particular mode of carrying out an individual task was a matter for which he was responsible. If he ought himself to have stood guard over those men while working in this position of peril, or if he ought to have taken precautions to see that no shunting was done upon the track where the men were actually working, or if he ought to have detailed one of their number to watch for the rest when he himself was called to another part of the yard, and he failed to discharge these duties, this was the negligence of a fellow servant.

In no aspect of the case can I find common law liability.

In the event of any other Court being of a different opinion, I would assess the damages at \$1,500.