

HODGINS, J.A., reading the judgment of the Court, referred to the findings of the jury and the charge of the trial Judge; and said that, in the absence of direct evidence as to the cause of the accident, where contributory negligence was negatived, the Privy Council had, in *McArthur v. Dominion Cartridge Co.*, [1905] A.C. 72, upheld a verdict where there was no other reasonable explanation of the mishap than the one adopted by the jury.

Here there was evidence that the deceased had gone in voluntarily between the cars; this the jury rejected.

The negligence found is not linked up by the jury with the death, nor is the theory upon which they must have acted the only reasonable theory. Want of packing is consistent with liability or non-liability; and the jury, having declined to accept the only evidence touching the vital issue, were bound to indicate the connection between the negligence they found and the accident, as they were directed to do. This duty should be insisted on in any case which, as here, presents features making it most difficult, in view of the non-acceptance of the statements of the only eye-witnesses, to draw a reasonable conclusion as to what else the deceased actually did. There is a want of proper evidence of direct causal negligence and absence of intelligible expression by the jury of what they thought was a reasonable inference.

There should be a new trial; the costs of the former trial should be in the cause, and the costs of the appeal to the appellants in any event.

FIRST DIVISIONAL COURT.

JULY 6TH, 1916.

*ST. MARY'S MILLING CO. LIMITED
v. TOWN OF ST. MARY'S.

Water—Mill-site—Riparian Rights—Dam—Raceway—Obstruction to Flow of Water—Trespass—Damages—Easement—Construction of Deeds—Severance of Tenement—Dominant and Servient Tenements.

Appeal by the plaintiffs from the judgment of CLUTE, J., ante 121.

The appeal was heard by GARROW, MACLAREN, MAGEE, and HODGINS, J.J.A.

R. S. Robertson, for the appellants.

F. H. Thompson, K.C., and F. C. Richardson, for the defendants, respondents.