

1902

*May 16.

THE CANADIAN PACIFIC RAIL- } APPELLANTS;
WAY COMPANY (DEFENDANTS)... }

AND

VIRGINIE BOISSEAU ÈS QUALITÉ, } RESPONDENTS.
ET AL. (PLAINTIFFS)..... }

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL
SIDE, PROVINCE OF QUEBEC.

*Negligence—Findings of jury—Operation of railway—Lights on train—
Evidence.*

A conductor in defendant's employ while engaged, in the performance of the duty for which he was engaged at the Windsor Station of the Canadian Pacific Railway in Montreal, was killed by a train which was being moved backwards in the station-yard. There was no light on the rear end of the last car of the train nor was there any person stationed there to give warning of the movement of the train.

Held, that by omitting to have a light on the rear end of the train the railway company failed in its duty and this constituted *prima facie* evidence of negligence.

APPEAL from the judgment of the Court of King's Bench, appeal side, affirming the judgment of the Superior Court, District of Montreal, which maintained the plaintiffs' action with costs.

At the trial the jury found, in addition to the facts stated in the head-note, that the place where the accident occurred was dangerous, that it was lighted at the time (7 p.m. on 1st December, 1899), and the 16th, 17th and 18th questions, with the jury's answers thereto, were as follows:

16. "Could the deceased have avoided the said accident by proper precaution and care?"—Ans. "Yes, he might, if he took proper precautions.—Unanimous."

*PRESENT:—Sir Henry Strong C.J. and Sedgewick, Girouard, Davies and Mills JJ.

17. "Could the defendants have avoided the said accident by the exercise of proper precaution and care?"—Ans. "Yes.—Unanimous."

18. "Is the accident due wholly or mostly to the fault of the deceased or the defendants?"—Ans. "Yes, the defendants mostly.—Unanimous."

At the trial defendants admitted that no employee or light had been placed at the rear end of the last car to warn people of the proximity and movements of the train, the contention, as to these alleged requirements, being that there was no obligation either by statute or at common law, to place a man or light on the last of the cars in question at a place such as that where the accident happened, and that it was impracticable and not customary to do so.

The principal grounds relied upon by the appellants in the present appeal were:—Mis-direction by the judge at the trial in instructing the jury that by the law the defendants were bound to have a man on the rear end of the rear car of the train whilst moving reversely at the time and place of the accident; also in not charging the jury that there were two ways open for the deceased to have passed, one of which did not expose him to any risk, and that he was negligent in not taking that way; also, in charging the jury that the witnesses agreed that it would have been prudent to have had a man at the back of the car, the statement not being borne out by the evidence; and likewise, because the amount awarded was excessive in view of the fact that the jury found that the deceased might have avoided the accident and, even though the accident was principally due to the fault of the defendants, as it might have been avoided by the deceased had he taken proper precautions all the damages should not be borne by the defendants, but, damages having been assessed, a deduction should have been

1902
CANADIAN
PACIFIC
RWAY. Co.
v.
BOISSEAU.
—

1902
 CANADIAN
 PACIFIC
 RWAY. CO.
 v.
 BOISSEAU.

made proportionate to the fault of the deceased, and judgment should not have been entered up against the defendants in any greater sum than one half the amount so found.

T. Chase Casgrain K.C. and *Frederick Meredith K.C.* for the appellants.

Beaudin K.C. and *Mignault K.C.* appeared for the respondents but were not called upon for any argument.

The judgment of the Court was delivered by :

THE CHIEF JUSTICE (oral).—This appeal fails. The question of negligence was very properly left to the jury. There was *primâ facie* negligence on the part of the company in omitting to have a light on the rear end of the train and in this it failed in its duty. It is true that there has been a finding which might lead to the inference that there was contributory negligence on the part of the deceased, but the jury have also found that there was neglect of duty on the part of the company, and according to the law of the Province of Quebec the plaintiff is entitled to recover, the question of contributory negligence in that province merely affecting the assessment of damages, which are mitigated in such cases.

I adopt in its entirety the opinion expressed in the court below by Chief Justice Lacoste and am of opinion that this appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellants: *Campbell, Meredith, Allan & Hague.*

Solicitors for the respondents: *Beaudin, Cardinal, Loranger & St. Germain.*