***ABERDEEN PRESS AND JOURNAL***

WEDNESDAY 4 APRIL 1866

“JURY TRIAL. MAITLAND OR STEWART V. SCOTTISH NORTH-EASTERN RAILWAY COMPANY.

This is an action for damages in consequence of an accidental death on the Scottish North-Eastern Railway. In November last, a surfaceman named Charles Stewart, in returning from his work along the line of railway between Cairnrobin cutting and Cove Station, was struck by a train and killed ; and the widow and children of the deceased now claim compensation from the railway company, alleging that the accident was caused through the company’s fault.

The case was tried before the Lord Justice-Clerk on Wednesday. The following was the issue laid before the jury. It being admitted that the pursuers are the widow and lawful children of the deceased Charles Stewart, sometime surfaceman, residing at Calsies, Cove: Whether, on or about the 8th day of November, 1864, the said Charles Stewart was a surfaceman in the defenders’ employment ; and while returning from his work was struck by a train and killed on the defenders’ line of railway between Cairnrobin cutting and Cove Station, through the fault of the defenders, the loss, injury, and damage of the pursuers.

Damages for Mrs Treziah Maitland or Stewart laid at £300 and for each of the other pursuers—viz Margaret Stewart, James Maitland Stewart, Charles Maitland Stewart, Jane Jemima Maitland Stewart and Francis Maitland Stewart - at £200.

Clark, in opening the case for the pursuers, attested the circumstances under which the accident took place. He said that the time the deceased met his death he was actually employed by the company. His house was at considerable distance from the place which he was working and in order to get home, required to travel along the line of railway. This was the only way which he could return from his work. It was the practice and the understanding of the workmen engaged on the railway that, when they had occasion to walk along the line, they should walk upon the side on which a train approaching would face them, so that they, seeing the train, may step aside; for, if travelling on the other line, the train might come upon them unawares. In order to enable them to carry out this properly, it was a rule of the company that, if any special or other train should require to travel out of the ordinary time, the train immediately preceding it should carry behind it a red flag or board through the day, and at night a green lamp, indicating that train is about to follow.

On the occasion of this unfortunate accident, however, the railway company failed to put up this signal on the train which immediately preceded the one by which the deceased met his death. The railway company had made no offer of compensation, so that the pursuers had been compelled to take action.

The Court then proceeded to hear evidence for the prosecution, in the course of which it was said that, after the regular train passed, another came along and that, in contravention of the company’s rules, the regular train did not exhibit the signal necessary to indicate that a special train would follow. The case for the pursuers having been closed. The Lord Justice-Clerk said that it certainly had been proved that one of the company’s rules in regard to placing signals behind trains had been neglected; but before a point in law could be made out, the pursuers would have to prove whose neglect it was—whether it was the neglect of the company, or of some one for whom the company was responsible. This had not been attempted to be proved the pursuers, and he therefore thought they had failed to make out point in law.

He thanked the jury for their attendance, and intimated that, owing to the turn the case had taken, their verdict would not be required, and that he would take the responsibility of the verdict instead of them.

A Juryman here stood up and said to his Lordship that he knew very little about law, but he knew common sense. One of the Company’s rules for the protection of the men had plainly not been carried out, and he thought it would be a pity to send away the poor widow without granting her some compensation.

The Lord Justice-Clerk —Unfortunately your view goes against the law. Special verdict was afterwards found for the defender.

Counsel for the Pursuers—Mr Charles Scott and Mr Francis Clark.

Agent—Mr D. F. Bridgford, S.S.C.

Counsel for Defenders—The Solicitor-General and Mr William Watson.

Agents—Messrs Webster & Sprott, S.S.G. COURT OF SESSION.”