

NEGLIGENCE—MASTER AND SERVANT—EMPLOYER AND WORKMAN—"PERSON IN CHARGE OR CONTROL OF LOCOMOTIVE ENGINE OR TRAIN"—EMPLOYERS' LIABILITY ACT, 1880 (43 & 44 VICT., C. 42), S. 1, S-S. 5—WORKMAN'S COMPENSATION FOR INJURIES' ACT (55 VICT., C. 30, [O.])

*McCord v. Cammell*, (1896), A.C. 57, is an important decision of the House of Lords in a case arising under the Employers' Liability Act (43 & 44 Vict., c. 42), which is the Act from which the Ontario Workmen's Compensation for Injuries' Act (55 Vict., c. 30), is derived. The facts were simple: the plaintiff's husband was a workman of the defendant company, and he was killed by reason of a wagon which had been detached from a train for the purpose of being unloaded, running down an incline, owing to its having been insecurely scotched in consequence of the negligence of another servant of the company in using slag for the purpose. The wagon in question formed part of a train in charge of an engine-driver and fireman, which having arrived at a point on an incline, was uncoupled by the fireman for the purpose of being unloaded, while the rest of the train proceeded to another point for discharge. There was evidence that the method of scotching employed was dangerous, and was known to and approved by the engine driver. The principal point of difficulty was whether or not the negligence which resulted in the death of the deceased could be properly attributed to any person "in charge or control" of the train. And on this point there was a great conflict of judicial opinion. The action was brought in the County Court, and the judge who tried the case held that there was no evidence of negligence under the Act, and the Divisional Court (Wills and Wright, J.J.) dismissed an appeal on the ground that the negligence was that of the fireman, and he was not in charge or control of the train. This decision was affirmed by the Court of Appeal (Lord Esher, M.R., and Lopes, L.J., Rigby, L.J., dissenting). Rigby, L.J., was of opinion that the engine driver could not get rid of the charge he had of the train by uncoupling his engine and leaving the train, and that since he knew and permitted the use of slag as a scotch for the wagons that were left standing on the incline, there was evidence for the jury of negligence by the person having the charge or