

form so close to the rails was for facilitating the unloading of material.

A number of witnesses swore that it was unnecessary to stand where the deceased was when he was injured in order to place the car; that this might have been done either from the wall or the top of the car. One witness states that after the wall was built there were some 13 or 14 cars put in, and Hammill (the deceased) came ahead of the cars and stood in the open space and signalled to his brakeman. Another witness, Morgan, in the employ of the city, who had charge of receiving the coal deliveries, and who asked Hammill on this occasion to put these cars in the switch, said that he had had a great many cars put in, probably 150; that there were from 15 to 20 cars put in after the wall was built; and that Hammill's custom was to go ahead of the cars, that he never saw him at the side of the car.

On the evidence the following are undisputed facts: that the wall in question was built upon the city's land for the purpose of a receiving platform; that it was properly placed, constructed, and used for that purpose; that the deceased had full knowledge of its position, and had on previous occasions placed cars in the yard, after the wall was built; that on the occasion in question he proceeded in front of the car, and, the car having reached the place where he desired to have it placed, stepped aside, and was caught by the moving car between it and the wall.

I have searched the evidence in vain to find some duty which the city owed to the deceased which should have restrained them from placing the wall where it was placed. It was intended to be used as a receiving platform; and for conveniently handling goods it was properly placed. For the city to have assumed that by so placing it some employee of the Grand Trunk Railway Company in placing cars would stand between the car and the platform, seems to me wholly unreasonable. But, supposing the defendants could so have anticipated the accident, it could only be upon the ground of assuming that an employee would recklessly and carelessly place himself in a position where he was sure to be injured. Even supposing that the wall were not placed as a receiving wall, but to be used as a fence, had not the city a right to use that land as they pleased? Suppos-