

# The Ontario Weekly Notes

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No. 6

APPELLATE DIVISION.

APRIL 6TH, 1914.

\*COOK v. GRAND TRUNK R.W. CO.

*Railway—Death of Servant—Brakesman—Action under Fatal Accidents Act—Cause of Death—Fault of Deceased—Disobedience of Rule—Negligence of Railway Company—Joint Negligence of both—Findings of Jury—Efficient Cause of Accident—Proximate Cause.*

Appeal by the plaintiff from the judgment of MIDDLETON, J., 5 O.W.N. 347, dismissing an action (tried with a jury) in which the plaintiff, the widow and administratrix of the estate of John R. Cook, deceased, claimed damages for the death of her husband, who was employed by the defendant company as a brakesman, and was killed while engaged in uncoupling cars, owing, as the plaintiff alleged, to the negligence of the defendant company.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

G. S. Gibbons, for the appellant.

D. L. McCarthy, K.C., for the respondent company.

MEREDITH, C.J.O. (after stating the facts):—One of the operating rules of the respondent company, approved by the Board of Railway Commissioners for Canada, and well-known to the deceased, is the following: "254. Every employee is required to exercise the utmost caution to avoid injury to himself or to his fellows, and especially in switching or other movement of trains. Jumping on or off trains or engines in motion, enter-

\*To be reported in the Ontario Law Reports.