

*Held*, per IDINGTON, J.—That even if the first marriage was assumed to have been validly performed, all the surrounding circumstances shewed that, by the words "to my wife," the testator intended to indicate the woman with whom he was living, in that relationship, at the time of the execution of the will and thereafter up to the time of his death.

*Held*, per DUFF, J.—That the woman who claimed to have been first married to the testator had not sufficiently proved that fact, and that the other woman, who was living with the testator as his wife at the time of the execution of the will and up to the time of his death, was entitled to the devise.

*Held*, per DAVIES and MACLENNAN, JJ., dissenting.—That the first marriage was sufficiently proved and, consequently, that the devise went to the only person who was the legal wife of the testator.

FITZPATRICK, C.J., was of opinion that the appeal should be dismissed.

Judgment appealed from (13 B.C. 161) affirmed, DAVIES and MACLENNAN, JJ., dissenting. Appeal dismissed with costs.

*Cassidy*, K.C., for appellant. *Travers Lewis*, K.C., for respondent.

Ont.]

WABASH RY. CO. v. MCKAY.

[May 5.

*Railway—Collision—Stop at crossing—Statutory rule—Company's rule—Contributory negligence.*

A train of the Wabash Railroad Co. and one of the Canadian Pacific Ry. Co. approaching a level crossing at obtuse angles. At each track was a distance semaphore between 800 and 900 feet from the crossing and on the C.P.R. track a "stop post" half way between said semaphore and the crossing, where a rule of the company required trains to stop. The Wabash train did not come to a "full stop" before reaching the crossing and the other did at the distance semaphore, but made no further stop at the "stop post." The trains collided at the crossing and the C.P.R. engineer was killed. In an action by his widow,

*Held*, that the failure of the engineer of the C.P.R. to stop the second time was not contributory negligence, and the Wabash Co. being admittedly guilty of negligence in not complying with the statutory rule (R.S. (1906) c. 37, s. 278), the widow was entitled to recover. Appeal dismissed with costs.

*Rose*, for appellants. *Robinette*, K.C. and *Godfrey*, for respondent.