

engines, and then he adds this: 'It is used on engines for switching and on engines for heavy work, such as pushing up grade.' . . . He says as to the steam-jet that about 50 per cent. of their engines have it. On the other hand, the gentleman from the Canadian Pacific, Mr. Preston, says: 'The sand-pipe behind the driving-wheel is not used to any extent on our line. I have not seen it on other lines. The steam-jet behind the drivers we do not use except on one engine, and then it is to wet the rails to clean the sand off. I never heard of it to get rid of a wet, frosty rail.' In dealing with the question as to whether, at this particular point, these defendants should have had better appliances than they had to guard against a train going down that grade, it is a question for you to consider whether, when the Grand Trunk use sand-pipes at the rear of the driving-wheels on engines for switching service, and on heavy work pushing up grades, these defendants should have provided a sand-pipe at this particular point. . . . You have to bear in mind that railway companies . . . are not supposed to have the very latest appliances. . . . They are expected to have reasonable appliances, reasonably up to date, reasonably sufficient for the work which is required to be done; and where the Grand Trunk have only 10 per cent. of their engines equipped with a sand-pipe at the rear, and the Canadian Pacific do not use it to any extent, it is a question for you whether it would be reasonable to expect these defendants to have it upon their engine, they having only 35 miles of road and a very few engines. But you have also to consider, on the other side of the question, whether that was a point which was so dangerous that they should have had a provision of that sort to guard against engines slipping down that grade either upon frosty rails or wet rails or upon other slippery rails, to guard against that and to do the heavy work which is required at that particular point, that is, the work of pushing up, with only a few locomotives. What do you say as to whether it would be reasonable to expect a small road to have engines such as the Grand Trunk have for the purpose of doing the kind of work that they have to do at Tilsonburg?"

As this train was backing on the line, sand-pipes, to be of any avail in staying the progress of the train on the down grade, must have been in rear of the rear driving-wheels. . . .

There was, in my humble judgment, no evidence whatever upon which a jury could properly find that defendants were guilty of negligence in not having the engine in question equipped with a rear sand-pipe. A like observation applies