

In the 4th and 5th paragraphs of the statement of claim the accident was alleged to have been caused by the negligence of the defendant company's servants or agents.

The defendants moved before pleading for particulars of the negligence alleged.

F. McCarthy, for motion.

J. A. Paterson, K.C., shewed cause.

CARTWRIGHT, K.C., MASTER:—The deceased was killed by the car in which he was seated running off the track and falling on its side. He was so seriously injured that he died almost immediately.

It was stated on the argument by their counsel that the defendants have not been able to ascertain the cause of the accident. And the plaintiff makes affidavit, as was to be expected, that she is unaware of the cause, which, if known by anyone must be in the possession of the company's servants.

Her counsel cited and relied on *Smith v. Reid*, 17 O. L. R. 265, and *Young v. Scottish Union and National Insurance Co.*, 24 Times L. R. 73; *McCallum v. Reid*, 11 O. W. R. 571.

The conclusion to be derived from these cases is that the motion is at least premature. The defendants can safely plead, as was done in *Smith v. Reid*, *supra*. On examination for discovery they can find out if plaintiff intends to rely solely on the principle of *res ipsa loquitur*. If not, she can be required to give particulars of any specific acts of negligence to be adduced at the trial.

The motion should be dismissed without prejudice to its renewal later if desired.

Costs will be to plaintiff in the cause.