

shunting operation. A brakeman on top of this car which was approaching another with which it was to be coupled, saw that the knuckles of the coupler on each car were closed, and, being unable to signal the engineer to stop, climbed down a side ladder, none being on the ends, and tried to reach round to the lever of the coupler. In doing so he held on with his left hand to a rung of the ladder only twenty inches above where his left foot was placed. There was no room for his other foot, and as the train went over a crossing he was jolted off and fell with his right arm under the wheels of the car, injuring it so that it had to be amputated. In an action against the company, the jury found that the latter was negligent in not having end ladders on the Wabash car nor levers of sufficient length. A verdict for the plaintiff was set aside by the Court of Appeal (26 O.L.R. 121).

*Held*, reversing the latter judgment, that the company was liable for non-compliance with the provisions of sec. 264, subsec. 1 (c) of the Railway Act.

FITZPATRICK, C.J., dissented on the ground that the plaintiff's own negligence caused the accident.

Appeal allowed with costs.

Creswicke, K.C., and C. C. Robinson, for appellant. Hellmuth, K.C., and MacMurchy, K.C., for respondents.

N.B.]

[May 6.

WEST v. CORBETT.

*Negligence—Railway—Prescription — Damage or Injury "by Reason of Construction"—Contractor — Transcontinental Railway Commissioners—Railway Act, s. 306.*

Section 15 of the National Transcontinental Railway Act provides that "the Commissioners shall have, in respect to the eastern division, . . . all the rights, powers, remedies and immunities conferred upon a railway company under the Railway Act."

*Held*, FITZPATRICK, C.J., and IDINGTON, J., dissenting, that the provision in s. 306 of the Railway Act, that "all actions or suits for indemnity for any damage or injury sustained by reason of the construction or operation of the railway shall be commenced within one year, etc.," applies to such an action