

# The Ontario Weekly Notes

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## COURT OF APPEAL.

OCTOBER 24TH, 1911.

DELL v. MICHIGAN CENTRAL R.R. CO.

*Railway—Injury to and Death of Servant—Section-man on Track Struck by Engine Moving Reversely—Absence of Warning Flag or Flagman—Negligence—Unsatisfactory Findings of Jury—New Trial.*

An appeal by the defendants from the judgment of CLUTE, J., upon the findings of a jury, in favour of the plaintiffs, the infant children of Levi Dell, deceased, in an action for damages for his death, while in the service of the defendants as a section-man, owing to the negligence of the defendants, as alleged. The jury assessed the damages at \$2,500, and judgment was given for that sum with costs.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, and MAGEE, J.J.A.

D. W. Saunders, K.C., and A. Ingram, for the defendants.

W. M. German, K.C., for the plaintiff.

The judgment of the Court was delivered by MAGEE, J.A.:—  
The finding of the jury that the negligence which caused the accident consisted of the crew running backwards in a westerly direction over the east-bound track without a flagman, must be construed with reference to the evidence and the instructions they received from the learned trial Judge. Throughout, the object of both the flag and flagman was referred to as being to stop approaching engines or trains from approaching others or a place where repairs upon the track were going on. A man placed at the rear end of an engine or train which was proceeding backward was not spoken of as a flagman. Hence that finding must, I think, be taken to mean that a flagman on the ground to warn approaching trains, or possibly to warn the