

*Held*, also, that the plaintiffs were entitled to an order restraining the defendants from running the cars upon their railway, except they were run in accordance with the determination of the engineer as to the stopping places.

*Laidlaw*, K.C., and *W. Nesbitt*, K.C., for appellants. *Fulberton*, K.C., and *W. Johnston*, for respondents.

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### HIGH COURT OF JUSTICE.

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Meredith, C.J.C.P., MacMahon, J., Teetzel, J.] [Oct. 1.

MAHONEY v. CANADA FOUNDRY CO.

*Procedure—Third-party notice—Multiplicity of actions—Unreasonably delaying plaintiff.*

Appeal from judgment of Boyd, C., whereby he reversed an order of the Master in Chambers, setting aside an ex parte order giving leave to serve a third-party notice in this action.

The action was brought by the personal representative of a person killed while in the employment of the defendants as a conductor upon a train employed by the latter in the erection of a bridge on the line of a railway in course of construction. The plaintiff alleged various acts of negligence on the part of the defendants, but not in respect to the condition of the track for which the defendants were in no way responsible. The defendants averred that the whole cause of the accident was the condition of the track and wished to serve a third-party notice on the railway company, to which the plaintiff objected.

*Held*, that this was not a proper case for a third-party notice, because—(1) according to the defendants the accident was caused by the subsiding of the track which was outside of their control, and so they were not liable. (2) Besides this action there were two other pending actions on behalf of other workmen killed or injured in the same accident, and it would be improper that the third party should be subject to have any damages for which they were liable for breach of any warranty or undertaking on their part to provide a safe and sufficient track, assessed piecemeal. (3) The plaintiff would be prejudiced and unnecessarily delayed in this case, if the third-party notice were allowed.

*Denison*, for railway company. *Patterson*, K.C., for defendants. *Phelan*, for plaintiff.