

OCTOBER 19TH, 1906.

DIVISIONAL COURT.

HAMMILL v. GRAND TRUNK R. W. CO. AND CITY
OF HAMILTON.

*Negligence — Municipal Corporation—Coal Yard—Railway
Siding — Injury to Yardsman — Construction of Wall—
Evidence—Findings of Jury—Nonsuit.*

Appeal by defendants the corporation of the city of Hamilton from the judgment of MABEE, J., in favour of plaintiff, the widow and administratrix of the estate of John Hammill, deceased, for the recovery of \$1,000 damages for the death of her husband by the alleged negligence of defendants.

Wallace Nesbitt, K.C., for appellants.

S. F. Washington, K.C., for plaintiff.

The judgment of the Court (FALCONBRIDGE, C.J., MAGEE, J., CLUTE, J.), was delivered by

CLUTE, J.:—The action is brought under Lord Campbell's Act, by the widow and administratrix, claiming damages for the death of John Hamill, who was killed by being crushed between a car of the Grand Trunk Railway and a stone wall erected by the city of Hamilton.

On application of plaintiff the action was dismissed as against the Grand Trunk Railway Company.

The corporation of the city of Hamilton have a city yard into which there runs a switch from the Grand Trunk Railway, passing the coal shed on the curve. On the opposite and concave side of the track the city erected a stone wall some 8 days before the accident. Plaintiff alleges that this wall was negligently built, and that it was placed "so close to the track that it was a trap for brakemen or others who required to place cars in the city's said yard."

On 4th July, 1905, the deceased had been ordered by the yardmaster of the Grand Trunk Railway (who had been requested by the city to do so) to place a car in the city's