Ont.] G.T.R.W. Co. *v.* MILLER. [May 27.

*Negligence — Railway train — Collision — Duty of engineer — Rules — Contributory negligence.*

By rule 232 of the G.T.R. Co. "Conductors and enginemen will be held equally responsible for the violation of any of the rules governing their trains, and they must take every precaution for the protection of their trains even if not provided for by the rules." By rule 52 enginemen must obey the conductor's orders as to starting their trains unless such orders involve violation of the rules or endanger the train's safety, and rule 65 forbids them to leave the engine except in case of necessity. Another rule provides that a train must not pass from double to single track until it is ascertained that all trains due which have the right of way have arrived or left. M. was engineman on a special train which was about to pass from a double to a single track and when the time for starting arrived he asked the conductor if it was all right to go, knowing that the regular train passed over the single track about that time. He received from the conductor the usual signal to start and did so. After proceeding about two miles his train collided with the regular train and he was injured. In an action against the company for damages in consequence of such injury:

*Held*, affirming the judgment of the Court of Appeal that M. was not obliged before starting to examine the register and ascertain for himself if the regular train had passed, that duty being imposed by the rules on the conductor alone; that he was bound to obey the conductor's order to start the train, having no reason to question its propriety; and he was, therefore, not guilty of contributory negligence in starting as he did. Appeal dismissed with costs.

*Walter Cassels*, K.C., and *Rose*, for appellant. *Clark*, K.C., and *Campbell*, for respondent.

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Ont.] TOWN OF AURORA *v.* VILLAGE OF MARKHAM. [June 9.

*Appeal — Quashing by-law — Appeal de plano — Special leave.*

The appeals to the Supreme Court from judgments of the Court of Appeal for Ontario are exclusively governed by the provisions of 60-61 Vict. c. 34, and no appeal lies as of right unless given by that Act. Therefore there is no appeal de plano from a judgment quashing a by-law (3 Ont. L. R. 609) though an appeal is given in such case by the Supreme and Exchequer Courts Act.

The Supreme Court will not entertain an application of special leave to appeal under the above Act after a similar application has been made to the Court of Appeal and leave has been refused.

Application for leave to appeal refused.

*Aylesworth*, K.C., for motion. *Raney*, contra.