

REPORTS AND NOTES OF CASES.

Province of Ontario.

COURT OF APPEAL.

Full Court.]

[Nov. 30, 1906.]

SCHWOOB v. MICHIGAN CENTRAL RY. CO.

Master and servant—Negligence—Defect in machinery—Defective system of inspection—Workmen's Compensation Act.

On the trial of the action herein, which was against a railway company to recover damages for the death of the deceased through his being called by the escape of steam occasioned by the giving away of a water tube in a locomotive engine on which he was working, the injury, in answer to questions submitted to them, set out in the report, found that the death was caused through a defect in the condition of the locomotive, though the defendants not supplying proper inspection, the defect itself not being specified; but from a discussion which the trial judge had with a jury when they brought in their answers, and from the answers to further questions submitted to them, such defect it appeared consisted in the way the tubes were fixed in the boiler, i.e., in not being, as it was said, properly belled; and that J., who did the work was a person entrusted by the defendants to perform the same.

Held, MEREDITH, J.A., dissenting, that there was no evidence to support a liability at common law, but that it was sufficiently established what the defect was and that such defect would have been discovered had there been a proper inspection and that J. was a person entrusted with the work so that there was a liability under the Workmen's Compensation Act in respect of which the deceased's widow and administratrix could maintain the action and was entitled to recover the damages assessed by the jury under the above Act.

Hellmuth, K.C., and *D. W. Saunders*, for appellants, defendants. *Crothers*, for respondent.