

yard-engine of defendants. The yard-engine was employed for shunting trains in the defendants' station yard at Brantford, and was also used for pushing heavy trains up the grade between Brantford and Mount Vernon on the Tilsonburg branch of the defendants' railway.

G. C. Gibbons, K.C., and G. S. Gibbons, London, for plaintiff.

D. L. McCarthy, K.C., and Pope, Montreal, for defendants.

MEREDITH, C. J.:—The movements of the yard-engine, when engaged in pushing a train up the grade, were not regulated, as those of other trains were, from the train-despatcher's office at London, but, by the defendants' rules, it was allowed to push freight trains up the grade without special orders from the train-despatcher, and the yard foreman in charge of the yard-engine was declared to be responsible for protecting it and for knowing that it had returned before allowing a train or engine to follow.

On the morning on which the collision occurred, the yard-engine had been used to push a freight train up the Mount Vernon grade, and was returning to Brantford, when it collided with the deceased's train, which had been permitted, contrary to the provisions of the rule, to follow the yard-engine.

Maguire, who was the yard-foreman, neglected his duty under the rule, and the proximate cause of the accident was undoubtedly this neglect.

The plaintiff claims both at common law and under the Workmen's Compensation for Injuries Act.

Her right to recover under the Act was admitted, and defendants paid into Court \$3,069.09 in satisfaction of the claim, which plaintiff refused to accept.

The plaintiff's claim at common law was based on the alleged negligence of the defendants in not providing "a proper and efficient system to control the operation of the yard-engine," and she alleges in her statement of claim that it was gross negligence to leave the control of the yard-engine to the yard-foreman, because of his many duties making it "impracticable for him to control the movement of out-going trains."

The plaintiff also alleges that, under proper and efficient regulations, the yard-engine would have been under the