

abandoned his claim, nothing remains entitling him to recover by way of quantum meruit. This appeal should therefore be dismissed with costs.

ANGLIN, J., gave reasons in writing for the same conclusion.

CLUTE, J., dissented, for reasons also given in writing.

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OCTOBER 2ND, 1906.

DIVISIONAL COURT.

MAHONEY v. CANADA FOUNDRY CO.

*Third Party Procedure — Master and Servant — Action for Death of Servant — Negligence — Condition of Railway Track — Breach of Implied Warranty of Safety — Relief over—Damages—Other Actions Arising out of same Accident—Notice of Trial of Third Party Issue.*

Appeal by the Guelph and Goderich Railway Company, the third parties, from an order of BOYD, C., made on 25th September, 1906, reversing an order of the Master in Chambers of 29th June, 1906, by which he set aside an ex parte order giving leave to serve a third party notice upon the appellants.

Shirley Denison, for the third parties.

J. A. Paterson, K.C., for defendants.

T. R. Phelan, for plaintiff.

The judgment of the Court (MEREDITH, C.J., MACMAHON, J., TEETZEL, J.), was delivered by

MEREDITH, C.J.:—The action is brought by the personal representatives of a deceased person who was in the employment of defendants engaged as a conductor upon a train—I suppose it may be called—which was employed in the erection of a bridge on the line of the third parties' railway, which was in course of construction, to recover damages for his death.

The plaintiff's claim alleges various acts of negligence as the basis of the action, but contains no specific allega-