

subsequent costs saved; therefore, the defendants should pay all subsequent costs, and receive costs down to that appeal: and, setting the one set of costs off against the other, it is reasonable to make no order as to costs and so save further costs.

*Appeal dismissed; MEREDITH, J.A., dissenting.*

SEPTEMBER 27TH, 1912.

SMITH v. GRAND TRUNK R.W. CO.

*Railway—Injury to and Death of Servant—Engine-driver—  
Negligence—Person in Charge—Conductor of Train—  
Workmen's Compensation for Injuries Act, sec. 3, sub-sec.  
5—Rules of Railway Company—Negligence of Engine-  
driver—Responsibility—Findings of Jury.*

Appeal by the defendants from the order of a Divisional Court, 3 O.W.N. 659, reversing the judgment of BRITTON, J., 3 O.W.N. 379, and directing judgment to be entered for the plaintiff upon the findings of the jury at the trial.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, J.J.A.

I. F. Hellmuth, K.C., and W. E. Foster, for the defendants.  
J. R. Logan, for the plaintiff.

GARROW, J.A.:—The action was brought by the plaintiff, the widow and administratrix of Charles Franklin Smith, to recover damages caused by his death, under circumstances of alleged negligence, while in the employment of the defendants, as a locomotive engineer. The accident in which the deceased met his death occurred about 10.30 p.m. on the 20th July, 1911, at Port Colborne, where the engine on which he was employed was by some one's fault thrown into the Welland Canal through an open drawbridge, and he was killed.

A special, consisting of 35 freight cars, a caboose, and the engine and tender in charge of the deceased, left Fort Erie about 9.45 p.m., proceeding westerly. When it arrived near the drawbridge, the signals were set against the train. The engineer blew the necessary blasts with the whistle, but did not get a signal to advance. He then said to his fireman—the sema-