

The admissibility of such evidence as against the original defendants is not affected by the fact that said defendants, a municipal corporation, sued for injuries caused by falling into an excavation in a public street, have caused a third party to be added as defendant as the person who was really responsible for such excavation, and that such third party was not notified of the examination of the plaintiff in the first action, and had no opportunity to cross-examine him. *TASCHEREAU* and *GWYNNE*, JJ., dissenting.

*Aylesworth*, Q.C., for the appellants.

*Shaw*, Q.C., for the respondent.

*O'Connor*, Q.C., for the third party.

Ontario.]

[May 31.]

GRAND TRUNK R.W. Co. v. WEEGAR.

*Railway company—Injury to employee—Negligence—Finding of jury—Interference with on appeal.*

W. was an employee of the G.T.R. Co., whose duty it was to couple cars in the Toronto yard of the company. In performing this duty on one occasion under specific directions from the conductor of an engine attached to one of the cars being coupled, his hand was crushed owing to the engine backing down and bringing the cars together before the coupling was made. On the trial of an action for damages, resulting from such injury, the conductor denied having given directions for the coupling, and it was contended that W. improperly put his hand between the draw-bars to lift out the coupling pin. It was also contended that the conductor had no authority to give directions as to the mode of doing the work. The jury found against both contentions, and W. obtained a verdict, which was affirmed by the Divisional Court and Court of Appeal.

*Held, per* *FOURNIER*, *TASCHEREAU*, and *SEDGEWICK*, JJ., that though the findings of the jury were not satisfactory upon the evidence, a second Court of Appeal could not interfere with them.

*Held, per* *KING*, J., that the finding that specific directions were given must be accepted as conclusive; that the mode in which the coupling was done was not an improper one, as W. had a right to rely on the engine not being moved until the coupling was made, and could properly perform the work in the most expeditious way, which it was shown he did; that the conductor was empowered to give directions as to the mode of doing the work if, as was stated at the trial, he believed that using such a mode would save time; and that W. was injured by conforming to an order to go to a dangerous place, the person giving the order being guilty of negligence.

*McCarthy*, Q.C., for the appellants.

*Smyth* for the respondent.