

defendant company "did on the 20th May, 1916, being the owner or manager of a locomotive steam engine in the Grand Trunk Railway round-house, in which a fire was burning, cause or permit the emission to the atmosphere from said fire of opaque or dense smoke for a period of more than six minutes," contrary to the provisions of a by-law of the city corporation; and to quash a similar conviction for a like offence said to have been committed on the 26th April.

D. L. McCarthy, K.C., for the defendant company.
F. D. Davis, for the informant.

MIDDLETON, J., in a written opinion, said that it appeared that the smoke complained of was emitted by locomotives while standing in the railway round-house. This smoke would pass up the ventilating flue or chimney of the round-house. The magistrate took the view that, so long as the smoke ultimately was emitted from the chimney or flue of the round-house, it made no difference that it was actually generated in a locomotive. On the 20th May, the smoke was emitted by an engine of the Wabash Railroad Company—a company which had running rights on the Grand Trunk Railway—but this, in the view of the magistrate, made no difference, for the smoke came from the round-house. On this ground, the magistrate distinguished *Rex v. Grand Trunk R. W. Co.* (1914-5), 7 O.W.N. 568, 8 O.W.N. 60, 33 O.L.R. 248.

Following what was decided in that case by a Divisional Court, the learned Judge was of opinion that the ventilating flue of a round-house, constructed for the purpose of carrying away smoke or fumes from the round-house and conducting them to a place where they would be less objectionable, was not "a flue, stack or chimney" within the meaning of sec. 400 (45) of the Municipal Act, R.S.O. 1914, ch. 192, under which the city by-law was passed.

It would not be right to amend the convictions in order to uphold them as for offences against the regulations of the Dominion Board of Railway Commissioners, under a totally different statute.

The offence, if any, for which one of the convictions was made was committed by the Wabash company; and, it not being shewn that what was done was in any way authorised by the defendant company, the latter could not be made criminally liable for the acts of the former, merely because that company had a running right over the Grand Trunk Railway.

Order made quashing the convictions with costs to be paid to the defendant company by the informant, and with the usual protection to the convicting magistrate and other acting under the convictions.