

A. E. H. Creswicke, K.C., for defendant.

W. E. S. Knowles, Dundas, for plaintiff.

TEETZEL, J.:—If I were the trial Judge, I should probably proceed to try the case without the assistance of a jury, but, in view of the amendment to the statement of claim, I am not sufficiently satisfied that another Judge might not take a different view.

The jurisdiction to strike out a jury notice in Chambers, being a matter of discretion, should, as stated by my brother Anglin, in *Clisdell v. Lovell*, 10 O. W. R. 925, 15 O. L. R. 379, "be strictly confined to cases in which it is obvious that no Judge would try the issues upon the record with a jury."

I think, in the proper exercise of discretion in this case, I should decline to strike out the jury notice on this application, but refer the matter to the trial Judge at the Hamilton jury sittings, to be taken up, on notice, either on the opening of the Court or when the case is called. Costs of the motion up to date in the cause.

MEREDITH, C.J.

FEBRUARY 10TH, 1909.

TRIAL.

FRALICK v. GRAND TRUNK R. W. CO.

Master and Servant—Injury to Servant and Consequent Death—Railway—Engine-driver—Collision of Train with Yard-engine—Disobedience of Rules—Neglect of Duty by Yard-foreman—Liability under Workmen's Compensation Act—Liability at Common Law—Defective System—Gross Negligence—Findings of Jury—Selection of Competent Persons to Superintend Work—Supply of Adequate Resources and Materials—Dismissal of Claim at Common Law.

Action by the widow and administratrix of the estate of Frank Fralick, deceased, to recover damages for his death by the alleged negligence of the defendants. The deceased was an engine-driver in the employment of defendants, and met with his death owing to a collision between a train which was being drawn by his engine and a