

if not daily, not perhaps at Welland, but wherever there is a curve in a busy railway yard throughout the country. If there be such permanency of probability of coincidence, then it is a question for the jury whether a system which does not guard against danger is not unnecessarily dangerous, and whether there is not negligence at common law on the part of the employer in maintaining it or allowing it to continue.

In my view, the case could not be withdrawn from the jury; but, as I have said, the present findings should not stand, and there should be a new trial; the costs of the former one to be costs in the cause, and the costs of this appeal to be costs to the defendants in any event.

I may add that, with the jury's finding that what was done was contrary to the rules, the negligence would be that of the company's servants, and they would only be liable under the Workmen's Compensation for Injuries Act, so that the judgment for \$2,500 would be unauthorised, the jury having found the damages under the Act to be \$1,500.

OCTOBER 24TH, 1911.

*PATTERSON v. DART.

*Mortgage—Redemption—Account—Interest—Insurance Moneys
—Expenditure for Rebuilding—Improvements—Lien—
Agreement.*

Appeal by the plaintiff from the order of a Divisional Court, 2 O.W.N. 429, affirming an order of LATCHFORD, J., dismissing the plaintiff's appeal from the report of the Judge of the County Court of the County of Essex, to whom (as an Official Referee) the taking of the accounts directed by the judgment in the action was referred.

The action (which was for redemption of mortgaged lands) was dismissed at the trial, but, on appeal, a Divisional Court declared the plaintiff entitled to redeem, and directed an account to be taken "of what is due from the plaintiff to the defendant or from the defendant to the plaintiff, making all just allowances to the defendant for money expended in improvements and rebuilding after fires, the management of the said premises, including the keeping of accounts, the collecting of rents, paying of

*To be reported in the Ontario Law Reports.