

in Benor v. Canadian Mail Order Co., 10 O.W.R. 1091; and Mackenzie v. Maple Mountain Mining Co., 20 O.L.R. 170, 615, does not affect it. . . .

[Reference to remarks at pp. 172, 173; Beaudry v. Read, 10 O.W.R. 622.]

The appeal upon this claim will be dismissed with costs as below stated.

In view of the fact that all the claims and appeals have been conducted by the same solicitors, I think that the costs awarded should be fixed as follows: the appellants may tax one half of all their costs both before the Master and here.

DIVISIONAL COURT.

FEBRUARY 6TH, 1911.

PETTIGREW v. GRAND TRUNK R.W. CO.

Railway—Injury to and Death of Brakesman—Disobedience of Rules of Railway Company—Brakesman Standing on Track Run over by Moving Train—Way at Side of Track not Left Clear—Insufficient Packing of Frog—Findings of Jury—Proximate Cause of Injury—Dismissal of Action.

Appeal by the plaintiff from the judgment of MULOCK, C.J. Ex.D., dismissing the action.

John Pettigrew, the plaintiff's husband, was a brakesman in the employment of the defendants, and was accidentally killed at the town of Hanover on the 14th January, 1910, by being run over by one of the cars of the defendants. The plaintiff alleged that the death of John Pettigrew was occasioned by the negligence of the defendants in piling or allowing lumber to be piled so close to the siding upon which a train of the defendants was being backed, that the deceased, whose duty called him to the space between the lumber and track, was obliged to go out upon the track, and, being upon the track and in front of a moving train, in some way had his foot caught, or slipped and fell, and was run over and killed. The plaintiff also alleged negligence in allowing the so-called way between the lumber piles and the track to become defective, unsafe, and insufficient, by reason of the collection there of snow and ice; and also in regard to the want of packing and condition of the packing between the rails in the railway frog and between the guard-rail and the rail of the line; and again, in that the coupling irons