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May 27. THE GRAND TRUNK RAILWAY COMPANY OF CANADA (DEFENDANTS)..... } APPELLANTS;

AND

EDMUND R. MILLER (PLAINTIFF).....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

*Negligence — Railway — Collision — Duty of engineman — Rules — Contributory negligence.*

By rule 232 of the Grand Trunk Railway Company, "conductors and enginemen will be held responsible for the violation of any of the rules governing their trains, and they must take every precaution for the protection of their trains even if not provided for by the rules." By rule 52, enginemen must obey the conductor's orders as to starting their trains unless such orders involve violation of the rules or endanger the train's safety, and rule 65 forbids them to leave the engine except in case of necessity. Another rule provides that a train must not pass from double to single track until it is ascertained that all trains due which have the right of way have arrived or left. M. was engineman on a special train which was about to pass from a double to a single track and when the time for starting arrived, he asked the conductor if it was all right to go, knowing that the regular train passed over the single track about that time. He received from the conductor the usual signal to start and did so. After proceeding about two miles his train collided with the regular train and he was injured. In an action against the company for damages in consequence of such injury :

*Held*, affirming the judgment of the Court of Appeal, that M. was not obliged, before starting, to examine the register and ascertain for himself if the regular train had passed, that duty being imposed by the rules on the conductor alone, that he was bound to obey the conductor's order to start the train, having no reason to question its propriety, and he was, therefore, not guilty of contributory negligence in starting as he did.

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\*PRESENT ;—Sir Henry Strong C.J. and Taschereau, Sedgewick, Davies and Mills JJ.

APPEAL from a decision of the Court of Appeal for Ontario affirming the judgment at the trial in favour of the plaintiff.

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The only question raised on the appeal was whether or not the plaintiff, Miller, was guilty of contributory negligence in starting the train, the engine of which was in his charge and which was passing from a double to a single track, on receiving the signal from the conductor, without first ascertaining for himself that the single track was clear. The ground on which the company contended that it was his duty either to make specific inquiries of the conductor as to the whereabouts of train No. 86, which should pass about that time, or to examine the register for himself, was that rule 232 made him equally responsible with the conductor for violation of any of the rules and imposed upon the both the duty of taking every precaution for the safety of their trains. The rules affecting the cases are set out or summarized in the above head-note.

*Walter Cassels, K.C.*, and *Rose*, for the appellants, referred to *Baster v. London & County Printing Works* (1) and *Bunker v. Midland Railway Co.* (2).

*Clark, K.C.*, and *Campbell*, for the respondent, were not called upon.

THE CHIEF JUSTICE (oral). This appeal must be dismissed. The judgment of Mr. Justice Osler, in the Court of Appeal, contains this passage:

It appears to me that unless we can hold that the plaintiff was to blame for not asking the conductor specially as to the first part of the train No. 86, the evidence fails to connect him with the negligence which caused the accident. The rules do not require him to examine the train register. On the contrary, they require him not to leave his engine except in case of necessity, and, as the obligation to examine

(1) [1899] 1 Q. B. 901.

(2) 31 W. R. 231.

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the register is expressly thrown upon the conductor, saying nothing of the engineer, it must be inferred that, where there is a conductor, there is no necessity for the engineer to leave his engine in order to do so.

Then, by rule 52, he is bound to obey the orders of the conductor as to starting the train, unless they endanger the safety of the train or require violation of rules.

I agree with my brother Street in thinking that the exception depends upon the knowledge or reasonable belief of the engineer of the danger or impropriety of the conductor's order. I see nothing in the rules which makes it imperative upon him to leave his engine in order to verify its accuracy.

We entirely concur in these observations and adopt them as the reasons for our judgment on this appeal.

The opinions of the other judges, in the Court of Appeal, were in much the same sense.

The appeal is dismissed with costs.

TASCHEREAU J. concurred.

SEDGEWICK J.—I concur. I think there was no evidence of negligence in this case on the part of the engineer.

DAVIES and MILLS JJ. also concurred in dismissing the appeal.

*Appeal dismissed with costs.*

Solicitor for the appellants: *John Bell.*

Solicitors for the respondent: *McPherson, Clark,  
Campbell & Jarvis.*