

## CANADIAN PACIFIC RAILWAY CO. v. WOOD.

1911

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA.

\*Feb. 21.

\*May 15.

*Operation of railway—Condition of yard—"Lay-out" of concourse—Switching—"Workmen's Compensation for Injuries Act," R.S.M. 1902, c. 178—Contributory negligence—Evidence—Volenti non fit injuria—Non-suit—New trial.*

APPEAL from the judgment of the Court of Appeal for Manitoba (1), reversing the judgment at the trial and directing that a new trial should be had.

At the trial before Perdue J. with a jury, an order of non-suit was refused by the plaintiff and, thereupon, the jury were directed to find a verdict for the defendants, which was done and judgment entered accordingly. On an appeal by the plaintiff this judgment was set aside, on the ground that there was some evidence which should have been left to the jury, and a new trial was ordered.

The Supreme Court of Canada, after hearing counsel on behalf of both parties, reserved judgment, and, on a subsequent day, the appeal was allowed with costs, Idington and Duff JJ. dissenting, and the judgment entered at the trial was restored.

*Appeal allowed with costs.*

*Wallace Nesbitt K.C. and Curle for the appellants.  
M. G. Macneil for the respondent.*

\*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

[NOTE.—The Judicial Committee of the Privy Council refused leave for an appeal in *formâ pauperis*, 20th March, 1912; 45 Can. S.C.R. vii.]

(1) 20 Man. R. 92.