

GRAND TRUNK PACIFIC RAILWAY }
 COMPANY (DEFENDANT) } APPELLANT;

1928
 *Oct. 26.

AND

MELLEY ANWEILER, ADMINISTRATRIX }
 OF THE ESTATE OF FRED ANWEILER, } RESPONDENT.
 DECEASED (PLAINTIFF) }

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

Trial—Withdrawal of case from jury—Action for damages for alleged negligence, as being responsible for death of defendant's employee—Plaintiff non-suited at trial—Judgment of Court of Appeal ordering new trial, affirmed.

APPEAL by the defendant from the judgment of the Court of Appeal for Saskatchewan (1). The action was brought under the *Fatal Accidents Act* of Saskatchewan, for damages for the death of an employee of the defendant, it being alleged that the deceased came to his death owing to negligence of the defendant, its agents, officers or employees. At the trial Maclean J. granted the defendant's application for non-suit, withdrew the case from the

*PRESENT:—Anglin C.J.C. and Newcombe, Rinfret, Lamont and Smith JJ.

(1) [1928] 2 W.W.R. 514.

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jury, and dismissed the action. The Court of Appeal (1) allowed the plaintiff's appeal from the judgment of Maclean J., and ordered a new trial. The defendant appealed to this Court.

At the conclusion of the argument for the appellant, and without calling on counsel for the respondent, the judgment of the Court was orally delivered by the Chief Justice, dismissing the appeal with costs; holding that the Court could not say that the jury would not have been justified, by drawing inferences from the facts in evidence, in making findings as to how the deceased met his death and whether or not it was caused by negligence of the defendant. The Court pointed out that it did not pass upon the question of the admissibility of the evidence contained in Steeper's examination for discovery, as to which it had not heard argument; and that, of course, it must not be understood even to suggest that upon the evidence now in the record the plaintiff should succeed; all it determined was that the Court of Appeal was right in holding that the case should not have been withdrawn from the jury.

Appeal dismissed with costs.

C. E. Gregory K.C. for the appellant.

David Campbell K.C. for the respondent.
