Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of **The** *Grand Trunk Railway Company* v. *Washington, from the Supreme Court of Canada; delivered 24th February* 1899.

Present:

LORD MACNAGHTEN.
LORD MORRIS.
SIR HENRY STRONG.

[*Delivered by Sir Henry Strong.*]

This is an Appeal from the Supreme Court of Canada reversing a judgment of the Court of Appeal of the Province of Ontario.

The action was brought by the Respondent against the Appellants to recover damages for injuries suffered by him resulting in the loss of his arm in January 1896 while in the discharge of his duties as a yardman in the Appellants' employ at Hamilton in Ontario.

At the trial of the action before Mr. Justice Street, the jury found that the injuries to the Respondent were caused by his foot having caught in a "frog" in the Appellants' yard and that the Appellants had been guilty of negligence in not having this frog "blocked" or properly protected. Judgment was thereupon entered for the Respondent for $2,500, the amount at which the jury assessed the damages. This judgment having been reversed by the Court of Appeal was restored by the judgment of the Supreme Court.

5509. 100.—3/99. [8] A

The Appellants are a railway company subject to the legislative authority of the Parliament of Canada, and the only question raised before the Supreme Court and argued on the present appeal relates to the proper legal construction of an Act of Parliament imposing certain duties on railway companies.

The enactment in question is contained in Section 262 of the Railway Act (Canada) 51 Vict. chap. 29, which is in the following words:—

" Section 262.

" (1.) This section shall apply to every railway " and railway company within the legislative " authority or jurisdiction of the Parliament " of Canada:

" (2.) In this section the expression 'pack- " ing" means a packing of wood or metal " or some other equally substantial and solid " material, of not less than two inches in " thickness, and which, where by this section " any space is required to be filled in, shall " extend to within one-and-a-half inches of " the crown of the rails in use on any such " railway, shall be neatly fitted so as to come " against the web of such rails and shall be " well and solidly fastened to the ties on " which such rails are laid:

" (3.) The spaces behind and in front of every " railway frog or crossing, and between the " fixed rails of every switch where such " spaces are less than five inches in width, " *shall be filled with packing* up to the " under side of the head of the rail:

" (4.) The spaces between any wing rail and " any railway frog, and between any guard " rail and the track rail alongside of it, " shall be filled with packing at their splayed " ends, so that the whole splay *shall be so* " *filled* where the width of the space between " the rails is less than five inches; such

" packing not to reach higher than to the
" underside of the head of the rail; pro-
" vided however, that the Railway Com-
" mittee may allow *such filling to be left*
" *out from the month of December to the*
" *month of April in each year both months*
" *included :*

" (5.) The oil cups or other appliances used for
" oiling the valves of every locomotive in
" use upon any railway shall be such that
" no employee shall be required to go
" outside the cab of the locomotive, while
" the same is in motion, for the purpose of
" oiling such valves."

The Railway Committee of the Privy Council of Canada on the 19th of November 1889, in pursuance of the authority conferred upon them by the 4th sub-section of section 262 made the following order :—

" In the matter of the application of the
" Grand Trunk Railway Company for per-
" mission to leave out packing on their
" lines in spaces behind or in front of frogs
" or crossings and between fixed rails of
" switches and wing rails and frogs and
" guards and track rails at splayed ends
" where spaces are less than five inches wide,
" from the 1st of December to the 30th of
" April of each year until further orders,
" under the provisions of Section 262 of the
" Railway Act, the committee authorises
" the packing to be left out as above on
" the Grand Trunk and affiliated roads and
" approves of draft notice to the company
" to this effect submitted, as per letter sent
" No. 3,047."

The jury found in answer to certain specific questions left to them by the Judge that the accident was caused by the Respondent's foot having caught in a frog and that the Appellants

in not having the frog "blocked" or properly protected were guilty of negligence which led to the accident.

The Appellant's contention in the Courts below and at their Lordships' bar, was that they were exonerated from any duty to cause the frog in question to be filled or packed in the interval between the 1st of December and the 1st of April by the order of the Railway Committee before stated dispensing with such filling. The validity of this objection which prevailed in the Court of Appeal must it is manifest depend altogether on the statutory authority of the Committee to make the order in question.

The Respondent insists that the provision contained in Sub-section 4 conferring upon the Committee power to dispense with filling has reference only to the filling specifically mentioned in the same Sub-section 4, and does not apply to the case of "the spaces behind and in "front of every railway frog or crossing" mentioned in Sub-section 3; and this was held by the Supreme Court to be the proper construction of the clause in question.

Their Lordships are unable to see that there is any error in the judgment of the Supreme Court in so construing the Act as to restrict the powers of the Railway Committee to the filling required by the 4th Sub-section. The words "such filling" in the proviso in their primary signification must mean the filling required by the immediately preceding part of the 4th Sub-section, and do not include that made obligatory by the 3rd Sub-section. And this the ordinary grammatical construction ought to prevail unless it can be shown that there is to be found in the Statute some context or provision making it imperative to enlarge the scope of the proviso so as to include the cases dealt with in Sub-section 3. Their Lordships are unable to find any such

context and are consequently of opinion that the judgment of the Supreme Court is right. If it had been intended to include in the proviso to Sub-section 4 the cases provided for by Sub-section 3 it would have been obvious that the plural word "fillings" should have been used; therefore, though not of course by itself conclusive, it is not immaterial to observe that the word "filling" in Sub-section 4 being in the singular number supports the construction adopted by the Supreme Court.

The decision of the Court of Appeal seems to have been influenced by contrasting the Act of Parliament with certain Statutes enacted by the Legislature of Ontario for the regulation of Provincial Railways. As these are enactments emanating from a different legislative body from that which passed the Statute to be interpreted and cannot be said to be *in pari materia* with it, their Lordships are unable to see that they ought to have any influence upon the question to be decided arising exclusively upon the Dominion Act and relating only to Dominion railways.

Their Lordships will humbly advise Her Majesty to dismiss this Appeal and to affirm the Judgment of the Supreme Court.

The Appellants must pay the Respondent's costs.