

HON. MR. JUSTICE BRITTON.

MARCH 15TH, 1913.

EAGLE v. MEADE.

4 O. W. N. 948.

Negligence—Injury to Hostler—Horse Stepping on—Negligence Not Proven—Pure Accident—Action Dismissed.

BRITTON, J., dismissed an action for damages to plaintiff, an hostler, in the employ of defendant by reason of a horse belonging to defendant stepping upon him and breaking his leg, on the ground that plaintiff had failed to establish any negligence on the part of defendant, the occurrence being a pure accident.

Action for damages for personal injuries sustained by reason of the alleged negligence of defendant and his servant, Wm. H. Meade.

J. M. Godfrey, for the plaintiff.

G. C. Campbell, for the defendant.

The plaintiff and one Wm. H. Meade, were both in the employ of the defendant, who carries on a livery and cartage business in Toronto.

On Sunday afternoon, the 8th September, 1912, Wm. H. Meade told the plaintiff to go into the stable, and start bedding down the horses. Wm. Meade says this direction was as to the west stable.

I do not see that any point can be made in defendant's favour because of that.

After the plaintiff got through in the west stable, he went to the east stable, and William Meade knew before the accident, that the plaintiff was in the east stable.

The plaintiff was at work in rear of a stall, next to the one occupied by one of defendant's horses.

William Meade went into the last mentioned stall, intending to unloose the horse, and take him to water. While he was in the act of doing this, and had the knot partly, or wholly untied, the horse stepped back, pulling his halter-rope completely away from the hitching place, thus allowing him to back far enough to step against, or upon the plaintiff—which he did—breaking the latter's leg.

The trial commenced with a jury.

At the close of plaintiff's case, defendant's counsel moved for a non-suit.