

W. S. Brewster, K.C., for the plaintiff.

I. F. Hellmuth, K.C., and W. E. Foster, for the defendants.

MULOCK, C.J.:—The plaintiff was, at the time of the accident, yard foreman of the defendants' railway yard at the city of Brantford, and as such foreman it was his duty to control the movements of trains within the yard. McNaughton was his assistant and subject to his orders. On the morning of the 16th October, 1910, the plaintiff and McNaughton were on duty. A loaded car was standing on Ryerson's siding, and the plaintiff required this car to be moved to the south side of the yard. The south side of the yard is a place lying to the south of all the railway tracks at this station. In the yard are a number of tracks, running easterly and westerly; two of them are main line tracks, the southerly one being the east-bound main line track, and the one lying immediately to the north of it being the west-bound main line track. North of this track are a number of sidings, the most northerly one being called Ryerson's siding, which runs in a south-easterly direction. To carry out the plaintiff's order to McNaughton to place this car at the south side of the yard, it was necessary to move the car easterly on Ryerson's siding until it reached a point where it could be switched on to the east-bound main line. Then it would proceed by the east-bound main line westerly until it reached a siding called the south lead, which led off the east-bound main line in a southerly direction to the place indicated by the plaintiff, viz., the south side of the yard.

Having given McNaughton the order, the plaintiff proceeded westerly along the west-bound main line for the purpose of stopping trains from the west until the car had taken the south lead, and thus was clear of the east-bound main line; and, whilst thus walking westerly, he was overtaken and struck by the engine which was pulling the car, causing the injury complained of in this action.

The following are the questions submitted to the jury with the answers:—

1. Were the defendants guilty of negligence causing the accident? A. Yes.

2. If so, in what did such negligence consist? A. Mr. McNaughton failing to carry out his orders from the plaintiff, Martin.

3. Was McNaughton competent for the position he filled as yard helper? A. No.