

Appeal to the Supreme Court of Ontario (Second Appellate Division) was heard by HON. SIR WM. MULOCK, C.J.Ex., HON. MR. JUSTICE CLUTE, HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE LEITCH.

W. M. McClemon, for the appellant.

S. F. Washington, K.C., for the defendant, the respondent.

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SUPREME COURT OF ONTARIO.

SECOND APPELLATE DIVISION.

MARCH 4TH, 1914.

KREUSZYNICKI v. CANADIAN PACIFIC R.W. CO.

6 O. W. N. 1.

*Negligence—Railway—Yardman Injured in Shunting Operations—Bar of Action under Workmen's Compensation Act—Alleged Defect in System—Pleading—Sufficiency of—Findings of Jury—Piece of Work Temporary in Character—Work in Charge of Foreman—Fellow Servant—Defendants not Liable at Common Law.*

MIDDLETON, J., 25 O. W. R. 262; 5 O. W. N. 312, held, that where no allegation was made against the defendants' general system of operating their railway that where there was negligence in a purely subsidiary and accidental piece of work such as shunting placed by the defendants in charge of a foreman, the same must be attributed to the foreman, a fellow workman of the plaintiff, and not to the system employed by the defendants so as to make them liable at common law.

SUP. CT. ONT. (2nd App. Div.) granted a new trial; plaintiff given leave to amend pleadings.

Appeal by the plaintiff from a judgment of HON. MR. JUSTICE MIDDLETON, 25 O. W. R. 262.

The appeal to the Supreme Court of Ontario (Second Appellate Division) was heard by HON. SIR WM. MULOCK, C.J.Ex., HON. MR. JUSTICE CLUTE, HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE LEITCH.

C. M. Garvey, for the plaintiff, appellant.

Angus MacMurchy, for the defendant railway company, respondents.

Their Lordships' judgment was delivered by HON. SIR WM. MULOCK, C.J.Ex. (v.v.):—The question of defective system, as before the Court, failed on account of the pleadings, and the question is as to whether the Court should direct a new trial on terms.