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COURT OF APPEAL.

APRIL 4TH, 1912.

*STONE v. CANADIAN PACIFIC R.W. CO.

Railway—Injury to Brakesman in Attempting to Uncouple Box Freight Cars—Defective System—Foreign Car—Dominion Railway Act, secs. 264, 317—Interchange of Traffic—Negligence—Evidence for Jury—Findings of Jury.

Appeal by the defendants from the judgment of BOYD, C., at the trial, in favour of the plaintiff, upon the findings of a jury, in an action for damages for personal injuries.

The plaintiff, a brakesman employed by the defendants, was endeavouring to effect a coupling between two box freight cars, and while doing so was either shaken off or fell from a ladder affixed to the side and close to the end of the car in which he was riding, and one of the wheels passed over his right arm, necessitating amputation. The car was not the property of the defendant, but had been received and was being hauled over their lines under the interchange of traffic provisions of the Railway Act. It was referred to in the evidence as "the Wabash car."

The plaintiff attributed the accident to three causes: (a) the ladder being defective, because the lowest step, or the step which was placed below the bottom of the car, was not joined to the rest of the ladder, but was separate and attached to the bottom timbers of the car, and was loose and insecure; (b) there was no ladder on the end of the car close to where the side ladder was; and (c) the coupling-rod used for controlling the action of automatic couplers, did not extend outward from the couplers to the side of the car, or within a short distance from it, but was so short as to necessitate the going in between the cars, or at all events to render it necessary to reach very far beyond the side of the car in order to get hold of it.

*To be reported in the Ontario Law Reports.