

HON. MR. JUSTICE MIDDLETON. NOVEMBER 17TH, 1913.

KREUSZYNICKI v. CANADIAN PACIFIC R.W. CO.

5 O. W. N. 312.

*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., *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.

Action by plaintiff, a yardman in the employ of the defendants, for damages for personal injuries caused by being run down by a shunting car, while engaged in such employment. The plaintiff was barred by lapse of time from an action under the Workmen's Compensation Act and the action was brought at common law.

The action was tried at Toronto, 6th and 7th October, 1913, with a jury, and questions of law arising were argued 8th November, 1913.

W. H. Price, for plaintiff.

A. MacMurchy, K.C., for defendant.

HON. MR. JUSTICE MIDDLETON:—In this case many of the facts were not disputed, and it was agreed by counsel that certain questions only should be submitted to the jury, all other matters of fact being determined by myself.

The railway company has an extensive yard at West Toronto. Part of this yard consists of a ladder track with six weigh leads and a switching lead. On these leads cars are brought in from the east end lead, and are there weighed and sorted ready for distribution to their various destinations in West Toronto, Parkdale and Toronto; the trains brought in being entirely rearranged to facilitate distribution. This necessitates at times great traffic upon these leads.