

tributed more evenly upon floor of car, and (3) in plaintiff attempting to stop the car with the piece of board.

The lumber was thrown upon the plaintiff by reason of the front wheels of the car leaving the track.

I have reached the conclusion that the wheels left the track, because of the board thrown by the plaintiff in front of one wheel. It is not an unfair inference from the evidence of the plaintiff himself that he did throw the board or block in front of the wheel.

A witness named Arthur Crouche, who was on the spot where the accident happened, and almost immediately after it happened, picked up a piece of board—the one beyond question that plaintiff had in his hand, and it bore upon it marks, apparently of the car wheel having passed over it. That being so, whatever negligence there was, if any, on the part of defendants, that negligence did not occasion this accident—because from all that appeared at the trial—the car would have kept to the rails—although it might have gone beyond the point at which the plaintiff desired the car to stop.

As to the want of brakes. The evidence did not disclose how brakes could be placed, so as to be of use on such a car carrying lumber. They could be operated only by a person upon the top of the load, or when walking or standing or running alongside the car. This car once had brakes—but not for use in carrying lumber to be piled.

One rail was slightly bent—and the other rail was not any higher, or if higher, only very little higher than the other—but upon the evidence, I am of opinion, that neither of these things contributed to the accident.

It must be borne in mind that this railway was not for passengers—or anything but lumber piled high on the cars—and for cars moving slowly upon it. Of course, it should be safe, and the inspection should be sufficient to prevent as far as possible, accident to employees in the yard, using the cars or road. No negligence on the part of the defendants which occasioned the accident has been shewn.

In my opinion—considering the short distance the car was required to go it was not negligence on the part of the plaintiff to move the car—without the aid of the locomotive—nor was it negligence to move it without lowering the pile consisting of the half load on the car.