

FALCONBRIDGE, C.J.

APRIL 19TH, 1905.

## TRIAL.

PARKER v. LAKE ERIE AND DETROIT RIVER R.  
W. CO.

*Master and Servant—Injury to Servant—Negligence—Person to Whose Orders Servant Bound to Conform—Right to Give Order—Servant Voluntarily Incurring Risk—Findings of Jury.*

Action to recover damages for injuries sustained by plaintiff while in the employment of defendants as a fireman on an engine, owing to the alleged negligence of defendants.

The following were the questions left to the jury and the answers:—

1. Did plaintiff, Parker, suffer the injury complained of by reason of the negligence of any person in the service of the railway company, to whose orders he was bound to conform and did conform? Yes.

2. If so, who was the person and what was the negligence? By Couse and by moving the engine too soon.

3. Did such injury result from Parker having so conformed? Yes.

4. Was such injury the result of Parker's own negligence? No.

5. Could plaintiff by the exercise of reasonable care have avoided the accident? No.

6. Was the injury the result of mere accident, for which neither plaintiff nor defendants are responsible? (Not answered.)

7. If plaintiff should be held entitled to recover, at what sum do you assess the damages? \$1,250.

J. A. Robinson, St. Thomas, and C. St. Clair Leitch, Dutton, for plaintiff.

J. H. Coburn, Walkerville, and A. Grant, St. Thomas, for defendants.

FALCONBRIDGE, C.J.:—Defendants contend that judgment ought to be entered for them, principally on the ground that plaintiff was not bound to conform to the order which he says he got from Couse, and that in any event it was a case of *volenti non fit injuria*.

As to the first question the case of *Bunker v. Midland*, 31 W. R. 231, was not followed in *Marley v. Osborn*, 10