

the west, and the line of rails was used for the purpose of running truck loads of material from one building to the others. Plaintiff was working in the trench with his back to the door and about 15 feet from it, when a man who was working with him passed between him and the wall, and he leaned over with his arm on the track to steady himself. At this moment a heavy truck, laden with wire, pushed by four men, which had come through the door behind him, without his knowledge and without any warning to him, passed over his arm and injured it. He said that he had looked to the east a few minutes before, and that the door was closed. There was evidence that a man named Rome had the duty of superintending the transfer of the wire from one part of the works to the other, and that he, in turn, was under the general control of one Drew; that just before the accident Rome went up to Drew and spoke to him and then pulled out the peg over the latch and opened the east door, and directed some men to push the car through it; that Rome and Drew were both in a position to see the plaintiff at work, and that no warning was given to him.

W. R. Riddell, K.C., for plaintiff.

R. M. Dennistoun, Peterborough, for defendants.

THE COURT (FALCONBRIDGE, C.J., STREET, J., BRITTON, J.) held that there was evidence to go to the jury that the accident was caused by negligence on the part of Rome, and that Rome was a person in the service of defendants who had superintendence intrusted to him, and that his negligence took place whilst he was in the exercise of such superintendence. Order made setting aside nonsuit and directing a new trial with costs of former trial and this motion to be paid by defendants.

APRIL 11TH, 1903.

DIVISIONAL COURT.

McGHIE v. RABBITS.

*Principal and Agent — Work Done by Order of Supposed Agent —
Action for Price of—Failure to Prove Authority of Agent.*

Appeal by defendants from judgment of Judge of County Court of Hastings in favour of plaintiff upon the findings of the jury in an action to recover the price of some repairs made by plaintiff upon certain buildings upon the order of one Thompson, whom plaintiff alleged to be defendants' agent.

W. B. Northrup, K.C., for defendants.

E. G. Porter, Belleville, for plaintiff.