

cars was a machine called a "Ledgerwood" used to unload earth and other material; and the plaintiff was in charge of this machine.

On the 23rd September, 1907, the construction train, which had been working to the north of Bala station, backed down to that station to obtain a supply of water for the use of the engine, and, while the engine-driver and conductor went into the station-house for orders, to enable the train to pass the station and proceed to the tank, the plaintiff alighted from his post on the flat car with the "Ledgerwood," and stood upon the platform until the train started towards the tank. He then, when the train was in motion, and going at least 5 miles an hour, attempted to get on board by putting his foot upon the truss-rod and grasping with his hand a part of the machinery of the "Ledgerwood" with which to pull himself up, and, while in that position, he came in contact with a baggage truck which was standing on the platform, with the result that his leg was broken.

The acts of negligence complained of in the pleadings were: (1) the truck; (2) inviting the plaintiff to board and starting too soon; (3) appliances for boarding the train imperfect and out of repair.

There was no conflict of evidence. The only witness called at the trial as to the occurrence itself was the plaintiff. A discussion arose at the trial as to the admissibility of the defendants' rules for the operation and management of trains, but, by consent of counsel, the rules were admitted before the Court of Appeal.

MACMAHON, J., held that the plaintiff had failed to establish negligence against the defendants, and that he was himself negligent in attempting to board the train when in motion, and dismissed the action.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, and MACLAREN, J.J.A.

E. F. B. Johnston, K.C., and B. F. Justin, K.C., for the plaintiff.

I. F. Hellmuth, K.C., and Angus MacMurchy, K.C., for the defendants.

The judgment of the Court was delivered by GARROW, J.A.:—No one invited the plaintiff to alight. He knew the stop was to obtain orders, and would probably only be momentary. He had no business to transact with the defendants, nothing except idle curiosity, as he himself admits, to induce him