

RIDDELL, J.:—The deceased was an employee of defendant, who is a railway contractor engaged in the construction of part of the Temiskaming and Northern Ontario Railway. The work of deceased was simply that of repairing cars. At the place of the accident there was a switch off the main line of the railway, upon which switch cars were placed by defendant for the purpose of repair. Upon the occasion in question there was more than one car upon this switch, that nearest to the switch being but a few feet away from the junction with the main line. The deceased, according to the evidence which the jury must have believed, was in the afternoon working under one of these cars. An engine of the defendant, in charge of the foreman, proceeding slowly about two miles per hour along the main line, was not intended to go upon the switch, but, by reason of the switch standing open, the engine ran in a few feet upon the switch, and jarred the car under which the unfortunate deceased was, and he sustained injuries resulting in his death.

At the trial various grounds of negligence were relied upon for plaintiff. It was contended: (1) that defendant should have had a different and more efficient kind of switch; (2) that the foreman or the engine-driver should have blown the whistle or given some other warning of the approach of the engine; and (3) that there should have been some signal placed upon the car when the deceased was working under it to warn the engine-driver upon the engine. All these the jury (rightly as it seems to me) negatived. It was contended by defendant that the deceased had been told by the foreman and by one McLeod not to go to the place in which he was when the accident happened; this the jury disbelieved.

In answer to questions the jury found that the casualty was caused by the negligence of defendant; that such negligence was "by the party or persons who were in A. R. Macdonnell's employ and who were in charge of the yard and repair works, should have seen that the switch was kept locked. Upon the evidence we do not know the name of the party, and his name does not appear in the evidence."

It would appear by the evidence that one Stewart, the foreman already referred to, was in charge of the repair work; and to that extent at least in charge of the yard. The jury have entirely disbelieved Stewart in one particular, and they may have doubted his evidence in this particular