

SUPREME COURT OF ONTARIO.

1ST APPELLATE DIVISION.

JUNE 26TH, 1913.

SIMMERSON v. GRAND TRUNK R.W. CO.

4 O. W. N. 1529.

Negligence—Injury to Brakeman—Shunting of Car—Negligence of Fellow-Servant in Charge of Operations—"Person in Charge or Control of Engine"—Findings of Jury.

MIDDLETON, J. (24 O. W. R. 403; 4 O. W. N. 1082) entered judgment for \$1,500 damages for personal injuries to plaintiff, a brakeman, upon the findings of a jury who found that the plaintiff was injured through the negligence of a fellow-brakeman in charge of shunting operations in giving a signal before plaintiff was clear of danger.

Allen v. Grand Trunk R.w. Co., 23 O. W. R. 453, referred to. SUP. CT. ONT. (1st App. Div.) dismissed appeal with costs.

Appeal by the defendant from the judgment which MIDDLETON, J., on the 9th day of April, 1913, directed to be entered after the trial before him sitting without a jury at Hamilton on the 2nd day of that month.

The facts are fully stated in the reasons for judgment of HON. MR. JUSTICE MIDDLETON, reported 24 O. W. R. 403, and it is unnecessary to refer to them except as to one point.

The appeal to the Supreme Court of Ontario (First Appellate Division) was heard by HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE and HON. MR. JUSTICE HODGINS.

D. L. McCarthy, K.C., for appellant.

W. S. McBrayne, for respondents.

HON SIR WM. MEREDITH, C.J.O.:—My learned brother, in stating the facts, appears to have thought that a witness had testified that Bryant had given the signal to the engine driver to reverse and go forward. In this he was in error. There was no direct evidence that it was Bryant who gave the signal. There was, however, ample evidence to justify the jury in drawing the inference that it was he who did so. It was Bryant's duty to give the signal, and without it the engine driver would have been guilty of a breach of his duty in reversing and going forward.

As that inference was drawn by the jury, they were warranted in finding that Bryant was guilty of negligence in