

yard. The statement of claim then states that the deceased was at the westerly side of the track and was walking in a southerly direction as the cars were slowly backing in, and while so walking back in the yard he was caught between the side of the car and the said fence, which was a space of about ten inches, and received injuries from which he died a few days later.

The city engineer states that the wall in question was made under his instructions. It is 72 feet long. The distance between the stone wall and the gauge of the rail is 3 feet 5½ inches at the northerly end and 3 feet 3½ inches at the southerly end. On the other side it is 5 feet. The width between the rails is 5 feet 2 inches. The width of the car is 9 feet 11½ inches, leaving a space of 10 inches between the car and the stone wall. It is stated by . . . one of plaintiff's witnesses that the space between the track and the stone wall is wider at the gate than it is further up the siding, but he did not measure it. Some emphasis was laid upon this point by plaintiff's counsel, but the difference in width, as appears from the plan and from the evidence of the city engineer, is only 2 inches. The evidence is not very clear as to how the accident really occurred. The deceased was "placing" the car, that is, putting the car opposite to the coal-shed where it was wanted, so that coal could be taken out of the car into the shed. It is said that he would walk along until the car door was opposite wherever it was wanted, giving the signal to the engine-driver; and that is what he was doing at the time of the accident. It is further stated that it was necessary for him to walk upon the side where the wall is, as the shed upon the opposite side is built so near the track that there was not room for him to walk on that side, and also because the shed side being the convex side of the track, he could not signal to the engine-driver, who was on the engine at the rear pushing the cars to the place desired. What must have occurred would seem to be this: that as the car was being pushed in, the deceased was in front of it, and when the car had reached about the spot where it was desired to have it placed, he stepped to the side of the track to signal, without apparently noticing the wall, and, the car being in motion, he was immediately caught between the wall and the car, and received the injuries of which he died. It is said that he was a very careful yardsman; had