

The Ontario Weekly Notes

Vol. II.

TORONTO, FEBRUARY 1, 1911.

No. 19.

COURT OF APPEAL.

JANUARY 26TH, 1911.

LEITCH v. PERE MARQUETTE R.W.CO.

Railway—Injury to Brakesman—Switch-stand at Side of Track—Dangerous Position—Body of Brakesman Protruding from Side of Train—Negligence of Fellow-servants—Findings of Jury—Evidence—Workmen's Compensation Act—Notice of Injury under sec. 13—Failure to Give—Reasonable Excuse—Absence of Prejudice—Damages—Ascertainment in Accordance with Statute.

Appeal by the defendants from the judgment of BOYD, C., upon the findings of a jury, for the recovery of \$4,000 damages, in an action for personal injuries sustained by the plaintiff, a brakesman in the employment of the defendants, by reason of the negligence of the defendants, as the plaintiff alleged. The plaintiff, in the performance of his duties on a train, was struck by the target of a switch-stand while the train was passing it, and was injured.

At the first trial of the action there was a nonsuit, which was set aside by a Divisional Court, who directed judgment to be entered for the plaintiff for \$2,520. Upon appeal from the order of the Divisional Court, the Court of Appeal directed a new trial: I O.W.N. 562. The judgment now in appeal was given at the new trial so directed.

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

D. L. McCarthy, K.C., and W. E. Gundy, for the defendants.

L. J. Reyecraft, for the plaintiff.

Moss, C.J.O.:— . . . In addition to disputing liability for negligence causing the plaintiff's injuries, and objecting