

JANUARY 14TH, 1905.

DIVISIONAL COURT.

MEENIE v. TILSONBURG, LAKE ERIE, AND PACIFIC
R. W. CO.

Railway—Injury to Person Loading Car—Train Running into Car—Negligence—Absence of Proper Appliances to Stop Train—Evidence—Misdirection—Res Ipsa Loquitur—Evidence as to Cause of Injury also Given—New Trial.

Motion by defendants to set aside the verdict and judgment for plaintiff in an action for negligence tried before MAGEE, J., at Woodstock, and to dismiss the action or for a new trial.

The motion was heard by MEREDITH, C.J., MACMAHON, J., TEETZEL, J.

G. T. Blackstock, K.C., for defendants.

C. Millar, for plaintiff.

MACMAHON, J.—Plaintiff is a labourer, and was on 28th January, 1903, employed by the Tilson Co. in loading with flour a car of defendants standing on the railway track in front of the mills of the Tilson Co. at Tilsonburg. While so engaged plaintiff received personal injuries which it is alleged were caused by the negligent and unskilful driving of a train, consisting of an engine, two flat cars loaded with lumber, and a box car, which struck the car plaintiff was unloading, causing a crate containing card-board, weighing about 500 pounds, to fall upon him, which caused the injuries of which he complained. . . .

The train crew consisted of the conductor, engine-driver, fireman, and brakeman, and when it reached Tilsonburg station, the train was divided at the rear end of the baggage car, and the engine and tender, with that car attached, hooked on to flat cars loaded with lumber, which were standing on a siding, to take them over to the Grand Trunk Railway air line.

The Tilson Co. had built a railway about seven-eighths of a mile long, by which it was connected with the Grand Trunk, the Michigan Central, and defendants' line, by means of switches.

In order to place the two cars of lumber on the Grand Trunk line, the train of defendants was run north from its station a short distance, and was then backed south on the Tilson