

bar, while Teasdale would get on the car and fasten them. About 6 feet to the west stood another car on the same siding so that the plaintiff, on the trestle, would be standing with his back towards it, and between it and the wrecking car.

It is usual when men are engaged in repairing cars on a track to put out a flag or flags as a danger signal to the crews of other engines or trains, that men are working there and that the car must not be interfered with. The plaintiff had previously worked on cars on the track, and the foreman had always seen that there were flags put up, and the plaintiff says that regular car repairers always carry such flags. The plaintiff admits that was the rule in practice.

The defendants in their reasons for appeal say they had a rule requiring a blue flag. The plaintiff had only seen red flags used. There is no evidence that there was any written rule, or that he had ever been made acquainted with any, but he admits knowledge of the practice and the reason for it, and that other companies had such rules, and that in working about a car the flags should be there, and that they were as necessary as their tools and were part of the equipment of car repairers, and that Teasdale might have got flags in the repair-shop. But so far as appears, it was the practice for the foreman on the job to see to the flags, and there is no rule or practice proved prohibiting the men from working without flags.

On this occasion, before they began work, Teasdale told the plaintiff that there were no flags out, and the plaintiff would have to be careful and listen for any noise. The plaintiff then said if there were no flags out he could not work, it was too dangerous and he was liable to get caught there. Teasdale said to him that they did not need any flags as it would only take four or five minutes, but he would take a look to see if there was any train coming. Teasdale did look around and told the plaintiff that he did not see any smoke around and the engine must be up at a point called the mission, which is three miles away, and that all was safe in between the cars. The plaintiff says, "He was my boss there." "He gave me orders to hold the bolts," and he says he was obliged to obey, and "I had to do whatever he told me." They went to work and in the course of it Teasdale was hammering on the grate-bars, and the noise made thereby, the plaintiff says, prevented him from hearing any approaching noise, and within the five minutes the car to the west was "kicked" by an engine or other cars and ran against the wrecking car, the plaintiff being caught between the two and injured. He admits that the accident was really caused by the failure to put out the flags.