

Tried with a jury at Hamilton on the 2nd of April, 1913.

W. S. McBrayne, K.C., for plaintiff.

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

HON. MR. JUSTICE MIDDLETON:—The plaintiff was employed as a brakeman upon the Grand Trunk Railway. A car situated upon a transfer siding had to be removed for the purpose of placing it upon an industrial siding. This car was the second car upon the transfer siding; and in order that it might be removed it was necessary that the two cars should be drawn from the transfer on to the main line, and that they should then be backed so that the second car would be free of the switch leading to the transfer. The first car would then be pulled forward and backed into the transfer, and the engine could pick up the car desired and take it to its destination.

The train crew consisted of an engineer and fireman, and two brakemen—the plaintiff and one Bryant. When the cars were drawn from the transfer on to the main line the brakes were not entirely free, and the plaintiff, who was upon the cars, went to the forward end for the purpose of releasing the brakes. When the car was backed upon the main line it was necessary for the brake to be applied, so that the car would not be carried too far after it was freed from the train.

As soon as the engine started to back, the coupling was released. The plaintiff, having released the brakes on the forward car, was passing to the rear; and, just as the signal to the engineer to reverse and go forward was given by Bryant, the brakesman standing upon the ground—whose duty it was to signal—the plaintiff was about to step from the forward car to the rear car. At this instant Bryant spoke to him, saying "Jump on the end car." Not clearly distinguishing what was said, the plaintiff, instead of immediately stepping across the space between the cars, hesitated for a moment, and then stepped. It was too late, as the momentary delay was sufficient to cause the end car to separate from the engine and the front car; and the plaintiff fell to the ground; fortunately being able to throw himself clear of the rails. Both feet were seriously injured; and this action is brought.

In giving his evidence, the plaintiff did not state his case clearly, although he told the facts accurately. He