

determined, at least between himself and the defendant, and possibly to the extent of declaring the contract with the Commission to be invalid. I see no reason why the plaintiff should not be permitted to proceed with his action. He seeks a decision on difficult, important and complicated questions which ought to be tried." Motion refused.

Johnston, K.C., and H. O'Brien, K.C., for plaintiff. Fullerton, K.C., for defendants.

Province of Manitoba.

COURT OF APPEAL.

Full Court.]

[Dec. 11, 1908.]

HARRIGAN v. GRANBY CONSOLIDATED MINING COMPANY.

Master and servant—Injury to workman—Negligence—Contributory negligence—Serious and wilful misconduct—Serious neglect.

Plaintiff was employed as a brakeman at defendant company's smelter. Part of his duty was to indicate to the engineer to stop at the required spot where the slag pots brought out from the smelter were to be emptied, and the engineer was not to move again until signalled to do so. Certain points existed where there were chains which were used to anchor the frame of the car to the track in order to prevent the locomotive being capsized when the pot, weighing about 12 tons, was being emptied. On the occasion in question, the engineer reached the chain point, when, considering he had gone too far, reversed, going back about two feet. Plaintiff, meanwhile, had dismounted, and not thinking that the engineer was going to back up, put his hand under to draw the chain through and anchor the car. In doing so, his hand was run over and seriously injured.

Held, on appeal, per HUNTER, C.J., and MORRISON, J. (affirming the judgment of MARTIN, J.) that the accident was due to a natural misunderstanding in the circumstances, and that there was neither negligence nor contributory negligence.

Per CLEMENT, J., the evidence did not warrant a finding that the engineer was guilty of negligence, and that the action was rightly dismissed.

S. S. Taylor, K.C., for plaintiff, appellant. J. A. Macdonald, K.C., for respondent company.