

yard. Of the cars on the east track 9 were then loaded, but the train had been drawn by the car-puller too far to permit of the 10th car, which was the most southerly one, being loaded; the power of the car-puller was not sufficient, owing, it was said, to the grade, to pull the whole train back so as to have the 10th car in position; in order to put it in position it was uncoupled from the rest and pulled about 3 or 4 feet, and that space was left between it and the rest of the train. Owing to the necessity arising for the elevator men to shovel what was left in one of the bins, the deceased was directed to go from the west track, where at this time the other part of the train was being loaded, to the bins on the east side to assist in the work of shovelling; in order to get there it was necessary for him to cross both tracks; he had crossed the west track, and was proceeding through the space which had been left between the 9th and 10th cars, and, as he was passing through, the 10th car was pushed against the 9th by the engine, which with its tender had been backed up to take away the loaded cars, with the result that he was caught between the draw-heads of the two cars and fatally injured.

The negligence charged was: (1) omission to ring the engine bell or sound the whistle or give any other warning that the engine was returning to take away the loaded cars; (2) failure to bring the engine, after it had come near to the train of cars and before attempting to couple them together, to a standstill, and to ascertain before making that attempt whether the train was in a condition to be pulled out with safety; (3) that the engine-driver was not in charge of the engine, but had allowed the conductor to act for him, and that the brakemen, who usually gave signals to the engine-driver, were not in their usual position.

W. R. Riddell, K.C., for defendants.

W. H. Blake, K.C., for plaintiff.

The judgment of the Court (MEREDITH, C.J., MACMAHON, J., TEETZEL, J.), was delivered by

MEREDITH, C.J. (after stating the facts as above):—If, upon a charge eliminating and withdrawing from the jury all the matters complained of, upon which there was, as I think, no evidence for the jury, a general verdict had been found for plaintiff, I should not have felt disposed to interfere with the finding.

There was, I think, evidence for the jury that the employees of defendants in charge of the shunting operations were guilty of negligence in backing the engine and tender