

in while the plaintiff was in a dangerous place in performance of his duty."

This action was not commenced within the time entitling plaintiff to claim under the Workmen's Compensation for Injuries Act; moreover the relationship between the fireman and him was not such as to entitle the latter to succeed under that Act.

The evidence lacks the essentials to constitute negligence for which at common law defendants can be made liable, having regard to the finding of the jury. The duty of the defendants in the interest of the safety of the employee in respect to the act of a fellow-servant is to select fit and competent fellow-servants. Plaintiff was familiar with what was required of him and was aware of the dangerous character of the employment. His own evidence and that of Greenleaf, a witness called on his behalf, is that the fireman's time is practically fully taken up in shovelling coal and poking and otherwise attending to the fire. This may well be when we bear in mind the statement of Turner, another of plaintiff's witnesses, that a locomotive drawing a heavily-loaded train, while running from Sarnia to London (a distance of about 59 miles) will consume between six and eight tons of coal, which must be shovelled by the fireman.

The train from which plaintiff fell was made up of fifty freight cars. Plaintiff stated in his evidence that the accident happened through the carelessness of the fireman in not looking at what he was doing; that he could have seen the plaintiff had he looked, and that had he done so the plaintiff should not have been struck.

I cannot see that under the circumstances this constitutes negligence on the part of the fireman; and even if my conclusion were otherwise I am satisfied that what the jury characterised as negligence was not negligence of the defendants. There is no evidence of incompetency or unfitness of the fireman or even that the defendants believed that he was otherwise than fit and competent, or that they were negligent or wanting in care in selecting him for their employee. What plaintiff's counsel contended is that the place on the locomotive where the fireman and plaintiff were required to work was contracted in space and therefore dangerous. If the inference is to be drawn from the answer of the jury that they intended their finding of negligence to extend to