

This seems a stronger case for the plaintiff, for here the result followed from the negligent act of the engineer himself in backing the engine after he had received and acted upon a "stop" signal without receiving a new signal of any kind.

The appeal fails and should be dismissed with costs.

HON. MR. JUSTICE MACLAREN:—I agree.

HON. MR. JUSTICE MEREDITH:—The only question argued upon this appeal is whether the driver of the engine in question was a person in charge or control of it in doing that which, as the jury found, caused the plaintiff's injury.

It is contended that he was not, but that the plaintiff was, because, admittedly, the plaintiff was in charge of the shunting operations in which the accident happened, and in which the engineer was subject to the directions of the plaintiff.

But an engineer, in running his engine, is, necessarily, most of the time subject to similar direction by train-despatchers, conductors, yard-masters, yardmen, brakesmen, switchmen and others; his engine could not be run safely or efficiently but for such direction; and he would seldom, if ever, be in charge or control of his own engine if such directions deprived him of it.

Physically he was in actual control of it; and so came quite within the literal meaning of the words "in charge or control"; and I can imagine no sort of substantial reason why it should not be considered he came, in the strictest legal sense, quite within the meaning of the words of the act—a person in charge or control of an engine.

A railway locomotive engine is a very powerful, and, if not very carefully managed, a very dangerous, piece of locomotive machinery; which, doubtless, was the reason for creating liability among fellow-workmen in a common employment, for the negligence of any person in charge or control of it for the employer, rather than merely for want of care in the selection of those put in charge of such machinery.

Whatever may be said regarding the person who, as train-despatcher, conductor, yard-master, yardman, brakesman, switchman, or in any other capacity, may, in the performance of his duty as such, give directions to the engineer, or other person in actual control, of the engine, there can-