

gent in "not having a notice posted warning unskilled employees in the proper use of the saw;" that the plaintiff was bound to conform to the order of Turner "because of his position as book-keeper;" and that the plaintiff was justified in using the saw because "it had been customary."

There was no evidence, I think, to justify these findings; and it appears to me that I ought to grant the motion for a nonsuit.

The answer to the question whether the plaintiff had himself been negligent is: "No, for being unskilled in the use of saw." The plaintiff himself said that he knew how to use the saw, and did not need any instruction. The only evidence that the saw had been used for the same purpose before was the plaintiff's own evidence. He said that he had cut wood in this way three or four times before; but it was not shewn that any one knew that he had done so.

When he found that the guard had been lifted as the result of his experiment, there was nothing to prevent his turning the switch and stopping the saw, so that the guard could be replaced without danger.

With every sympathy for the unfortunate plaintiff, I think that, notwithstanding the finding of the jury, I must dismiss the action.

Costs will probably not be asked.

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MIDDLETON, J.

APRIL 9TH, 1913.

SIMMERSON v. GRAND TRUNK R.W. CO.

*Master and Servant—Injury to Servant—Negligence of Fellow-servant in same Grade of Employment—Liability of Master—Workmen's Compensation for Injuries Act, sec. 3, subsec. 5—Railway—"Person in Charge or Control of Engine"—Evidence—Findings of Jury.*

Action for damages for injuries sustained by the plaintiff while in the defendants' service as a brakesman upon a train, owing, as the plaintiff alleged, to the negligence of another brakesman, who at the time was in charge of the engine.

The action was tried before MIDDLETON, J., and a jury, at Hamilton, on the 2nd April, 1913.

W. S. McBrayne, for the plaintiff.

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