

THE  
ONTARIO WEEKLY REPORTER

(TO AND INCLUDING JANUARY 21ST, 1905.)

VOL. V. TORONTO, JANUARY 26, 1905.

No. 3

JANUARY 10TH, 1905.

DIVISIONAL COURT.

FORSYTHE v. CANADIAN PACIFIC R. W. CO.

*Master and Servant—Injury to Third Person by Negligence of Servant—Acts outside of Employment—Railway—Section-men—Piling Ties on Highway near Crossing.*

Motion by plaintiff to set aside nonsuit entered by ANGLIN, J., at the trial, and to enter judgment for plaintiff upon the findings of the jury or for a new trial.

Action to recover damages for bodily injuries sustained by plaintiff by reason of the alleged negligence of defendants.

C. Millar, for plaintiff.

I. F. Hellmuth, K.C., and W. H. Curle, Ottawa, for defendants.

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

MEREDITH, C.J.—We are of opinion that the nonsuit was right and that the motion should be dismissed.

The action was brought to recover damages for personal injuries sustained by plaintiff owing to his horse having taken fright at a pile of ties lying at the side of the highway which was crossed by the line of the Canadian Pacific Railway, and which were piled, as it appears from the plan, just outside of the line of the travelled way.

The horse appears to have run away, and plaintiff to have suffered severe injuries.

Defendants are sought to be made liable because, as was undoubtedly the fact, the ties were placed where they were by a man named Dunlop, who was section-foreman of the defendant railway, and two men working under him upon the section,—a man by the name of Torrance, who was called as a witness at the trial, and a man named Murphy.