

On the matter being submitted to the jury, in addition to finding that the machine was out of repair by reason of these nuts being loose, the jury found that the defendants were negligent in "not having a notice posted warning unskilled employees in the proper use of the saw," and that the plaintiff was bound to conform to the order of Turner "because of his position as bookkeeper," 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.

SIMMERSON v. GRAND TRUNK Rv. CO.

4 O. W. N. 1082.

Negligence — Injury to Brakeman — Shunting of Car—Negligence of Fellow-servant in Charge of Operations — "Person in Charge or Control of Engine"—Findings of Jury.

MIDDLETON, J., entered judgment for \$1,500 damages for personal injuries to plaintiff, a brakeman, upon the findings of a jury, who found that the plaintiff was injured through the negligence of a fellow brakeman in charge of shunting operations in giving a signal before plaintiff was clear of danger.

Allen v. Grand Trunk Rv. Co., 23 O. W. R. 453, referred to.

Action for damages for injuries sustained by the plaintiff while in defendants' service as brakeman owing to the alleged negligence of a fellow brakeman who was at the time in charge of the engine.