

track of the defendants the Toronto Hamilton and Buffalo Railway Company, by a light engine of that company, running reversely, to recover damages for his death.

The action was tried before BRITTON, J., and a jury, at Peterborough.

F. D. Kerr and V. J. McElderry, for the plaintiff.

J. D. Spence and G. W. Wallrond, for the defendants the Canadian Pacific Railway Company.

J. A. Soule, for the defendants the Toronto Hamilton and Buffalo Railway Company.

BRITTON, J.:—At the close of the case for the plaintiff and again at the close of the evidence, counsel for the defendants asked for dismissal of the action. I reserved my decision and submitted questions to the jury, which the jury answered; and they assessed the damages at \$1,000.

The deceased was a "line-man" in the employment of the defendants the Canadian Pacific Railway Company, and on the day of his death had with others been working for that company at Welland. That company had certain running rights on the railway of the defendants the Toronto Hamilton and Buffalo Railway Company; and the Canadian Pacific Railway Company had a car, called a boarding-car or sleeping-car, which the workmen could use, and, if the workmen used it, they were charged a certain sum agreed upon, which was deducted from their wages. This car was on a dead-end track in the north-western part of the yard of the Toronto Hamilton and Buffalo Railway Company.

On the morning of the accident, the deceased, with his boss and four other workmen, went to Welland to do some work. They travelled part of the way upon a hand-car, then walked to the station of the Toronto Hamilton and Buffalo Railway at Hamilton, and took a Canadian Pacific train for Welland. At the close of the day, they returned to Hamilton, and intended to go to the sleeping-car to stay all night. Upon arriving at the place where the hand-car had been left, they found that the hand-car had been removed. Then all started to walk to the sleeping-car or boarding-car. Just before the accident, all were walking on the east-bound track.

At the place of the accident there were three tracks, one for east-bound trains, one for west-bound trains, and the third track had upon it cars at rest. These men were walking westerly