HON. MR. JUSTICE KELLY:—Plaintiff was a brakeman in the employ of defendants, and on December 16th, 1912, was injured by coming in contact with a poker which was being used by another of defendants' employees—a locomotive fireman.

He was what is known as a front brakeman, that is, a brakeman whose duties are on the forward part of a freight train. When not actually at work during the run the front brakeman is assigned a place in the cab of the locomotive with the engineer and fireman. This was the condition of things at the time of this happening, which took place about six miles east of Sarnia, while the train was running in an easterly direction. The train was approaching a station, and plaintiff, as was his duty, stepped to the gangway or passage between the locomotive cab and the coal tender for the purpose of looking for signals and observing if there were any hot boxes in the trucks of the cars. Stepping backwards from having done this he was struck or came in contact with a long poker then in use by the fireman in the performance of his duties. The blow threw the plaintiff from the train and the cars or some of them, passed over his left leg, injuring it so seriously that amputation was necessary about four inches below the knee.

He bases his claim upon what he alleges was the improper, careless and negligent handling of the poker by the fireman, and claims further that the fireman was, as the defendants knew, or should have known, incompetent, unfit and not a proper person to do the work which he was thus engaged in, and that he was not a proper person, as the defendants knew, or should have known, to have in their employ.

On the opening of the trial the claim was amended by adding allegations that his occupation as a brakeman in defendants' employ was a dangerous one and that defendants were bound to take all reasonable precautions for his safety, which they omitted to do; that the place provided for plaintiff to do his work was not fit and proper; and that defendant omitted to provide a proper system by which the dangerous character of plaintff's employment might be mitigated or lessened.

The jury's only finding of negligence was that the "accident was caused by the lack of care by the fireman in handling his poker in the restricted place which he had to work