

as to the defendants' responsibility under the circumstances for the act of the engineer.

According to the plaintiff the circumstances were as follows: the train crew consisted of the conductor, the engineer and his fireman and two brakemen. On arriving at the station shortly after midnight the conductor directed a certain shunting operation to be made and left the management of it to the plaintiff, the rear end brakeman, while he proceeded to the station-house in the discharge of his other duties. It being dark, the movements were necessarily directed by means of signals with lanterns. The plaintiff gave to the engineer the "back up" signal, in consequence of which the engine under the direction of the engineer backed up. When it had proceeded as far as the plaintiff considered necessary he gave the "stop" signal, and as he says (one of the much disputed points) the backing movement ceased. Then while the engine was at rest the plaintiff proceeded between two cars to arrange a coupling, and while in that position, without any new signal having been given, the backing movement was resumed, with the result that the plaintiff was caught and injured as described.

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

R. S. Robertson, for the plaintiff.

HON. MR. JUSTICE GARROW:—By sub-sec. 5 of sec. 3 of the Workmen's Compensation for Injuries Act an employer is made responsible "by reason of the negligence of any person in the service of the employer who has the charge or control of any points, signal, locomotive, engine, machine or train upon a railway, tramway or street railway."

In *Martin v. Grand Trunk R. Co.*, not yet reported, this Court recently considered and applied to the facts in that case the sub-section which I have just quoted. That was the case of a negligent order given to an engineer by a yard helper by reason of which his foreman was run down and injured. The engineer, in that case, could not be said to have been negligent, for his duties required him to act upon the orders of the yard helper in the absence of the yard foreman. And we accordingly, Lennox, J., dissenting, held the defendants responsible for the consequences of the negligence of the yard helper in controlling the movements of the engine.