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No. 31.

COURT OF APPEAL.

APRIL 18TH, 1910.

CANTY v. CANADIAN PACIFIC R. W. CO.

Railway—Injury to and Death of Brakesman—Accident in Railway Yard—Making up Train—Negligence—Alleged Insufficiency of Men for Operation—Finding of Jury—No Evidence to Support—Negating of other Grounds of Negligence.

Appeal by the defendants from the judgment of MULOCK, C.J.ExD., in favour of the plaintiff, upon the findings of a jury. Action for damages for the death of the plaintiff's son, Patrick Canty, who lost his life while in the service of the defendants as a yard brakesman.

The accident occurred in the defendants' yard at the city of Ottawa on the 3rd May, 1909. The deceased was the senior brakesman, and as such was in charge of the signals by which the engine movements were governed. At the time of the injury he with others was engaged in gathering together and making up a train of freight-cars intended to be sent on to their destination. His fellow-servants in the operation were: the engine-driver and fireman; Duntz, the junior brakesman; and Reynolds, the yard foreman, the deceased's immediately superior officer.

Reynolds had gone on ahead to find and mark with chalk, according to the usual custom, the cars which were to be gathered and placed together to form the train. The place of Duntz was on top of the cars, so as to be in a position to receive from the deceased the signals, which he transmitted to the engine-driver. The engine, with some 13 cars attached, had pulled out of track 7, a siding, intending to back into track 10, into which at the time the engine was slowly backing. In that situation the plaintiff, in some way not apparent, had the misfortune to have his foot