

Eng. Rep.]

HART V. THE LANCASHIRE AND YORKSHIRE RAILWAY CO.

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The plaintiff was travelling in a second-class carriage from Ashton to Manchester, and the train by which he was travelling was stopping for the purpose of the Manchester tickets being collected at the Miles Platting platform of the branch line from Ashton before-mentioned, and some 300 or 400 yards from the spot where the points from the sidings open on to the main line.

The coaling shed before-mentioned is the place where the engines are supplied with coal, and on the 20th October an engine which had just come off a journey had, in accordance with the usual practice in such cases, been given in charge by its driver and stoker to a servant of the company, whose business it was to see to the coaling of the engines. It had been coaled by him at the coaling shed, and was slowly returning therefrom, and in the course of being taken by him from the coaling shed siding to the other siding leading to the engine shed. In the ordinary course of things, the engine after coming from the coaling shed would have gone along the siding, until it had passed the points of the siding leading to the engine shed, when it would have been reversed and backed over them into that shed, but just at the moment when the man in charge of the engine should have reversed its action, he was seized with a fit and fell across the footboard of the engine in a state of insensibility. The consequence was, that the engine, instead of being backed into the engine shed, proceeded onwards upon the siding towards the points opening on to the main line at the moment that a down express train from Manchester, and an up express train from Rochdale were approaching the station at full speed on the up and down main lines. At this juncture, the pointsman in charge of the signal box and points at the part of the line, seeing the engine, with the man lying across the footboard, approaching the main line of rails, and having but an instant in which to decide what to do, came to the conclusion that the least hazardous and dangerous course to pursue, was to turn the points of the main line, so as to send the engine on to the Ashton branch line, knowing that if any train might happen to be there it would be either slackening its speed, or at a stand still, whereas if he had let it go upon either of the main lines of rail it would infallibly have come into collision with one or the other of the before-mentioned express trains travelling at top speed, when the consequences would in all probability have been far more disastrous. Under these circumstances, therefore, the pointsman deliberately turned the runaway engine on to the Ashton branch. The result of his so doing was, that the engine ran on until it reached the spot where the train in which the plaintiff was sitting was standing as before-mentioned, and, coming into collision with it, caused the injuries to the plaintiff of which he complained in his declaration.

It appeared too that, since the accident, the defendants had altered the siding in question, so that on leaving the coaling shed the engines now run, not on the same line, but on a supplementary siding, leading to a "dead end," where a runaway engine would be brought to a standstill.

The learned judge told the jury that the liability of the defendants depended on the negligence of their servants being proved, and that it

was negligence to do that which, under the circumstances, was dangerous, or to omit to do what ought to be done, but it was not negligence simply to omit to do the best under the circumstances. The question was for the jury; was there any negligence in the pointsman, or was there negligence in the defendants having only one man to coal the engine? The man had done it for years, and, but for his unforeseen and unexpected illness it would have been safely done on this occasion. The company did not know, nor was it proved, that he was liable to fits. Then as to the siding, no doubt it had been altered since the accident, but it was not negligent in them not to guard beforehand against an accident which could not reasonably have been foreseen.

The jury found a verdict for the plaintiff for £110 damages, and a rule was afterwards moved for and obtained by *Manisty, Q. C.*, on the part of the defendants, for a new trial, on the ground that there was no evidence of negligence in the defendants to go to the jury, upon which liability could be fixed on them, and also that the verdict was against the weight of the evidence, and now

*Holker, Q. C.*, and *McConnell*, for the plaintiff, showed cause against it, and contended that the verdict of the jury establishing negligence in the defendants was well warranted by the facts and evidence of the case. We do not complain of the act done by the pointsman, for probably he did the best thing which under the circumstances of the moment he could do, for had the engine been allowed to proceed as it was going it would have gone on to the main Rochdale line and came into collision with the Yorkshire express, and had he turned it on to the other main line of rail a like result would have followed with the Manchester express. The jury, however, considered there was negligence in the company, and the plaintiff says the negligence consisted in this; first, that there should have been two men employed on the engine at the coaling process. A man engaged in such a job is very liable to become affected by the sulphurous vapour arising from the burning coal. By one of their printed regulations they seem to provide against the very event of the sudden illness of a driver of an engine, by always having two men attached to the engine on a journey, and it cannot be contended that, if two men are necessary on an engine when running on the main line, they are not equally so when travelling up and down a siding, where if the engine runs away it must get upon the main line. [*BRAMWELL, B.*—You might almost as reasonably argue that there ought to be three men on the engine in case two should fall ill at the same moment.] The second point of negligence was in the arrangement of the siding rails, the points of which before the accident stood always open on to the main line, but which have been altered since by adding a small supplementary siding, so that an engine now running away from the coaling shed would not get upon the main line as it would previously have done, but would run on until brought up at a "dead end." This obviously shows what the defendants should have done before; the precaution is an obvious one, and the defendants as public carriers were bound to use and adopt every possible reasona-