

Supreme Court of Canada
Nelson v. Canadian Pacific Railway Co., (1917) 55 S.C.R. 626
Date: 1917-11-28

Nelson v. The Canadian Pacific Railway Company.

1917: October 15; 1917: November 28.

Present: Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

ON APPEAL FROM THE SUPREME COURT OF SASKATCHEWAN.

Negligence—Injury—Railway yard—Switch stand—Board of Railway Commissioners.

APPEAL from the judgment of the Supreme Court of Saskatchewan *in banco*¹, reversing the judgment of Haultain C.J. at the trial and dismissing the plaintiff's (appellant's) action with costs.

This action is one brought to recover damages by the plaintiff-appellant for injuries sustained by him in consequence of his falling or being thrown from a car in the Moose Jaw yard of the defendant company, while engaged as a switchman. The defendant's negligence complained of and found by the jury was in having a switch stand "too close to the rail." The trial judge entered a verdict on the jury's findings for the damages found by them, which verdict was set aside and the plaintiff's action dismissed by the Appeal Court of Saskatchewan. That court held that there was no evidence showing that placing the switch where it was placed was contrary to any order of the Board of Railway Commissioners or was not according to good railway practice; and, moreover, that the accident was due to plaintiff's own negligence.

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On appeal to the Supreme Court of Canada, after hearing counsel on behalf of both parties, the court reserved judgment and, on a subsequent day, maintained the appeal with costs, Sir Charles Fitzpatrick C.J. and Davies dissenting.

Appeal allowed with costs.

P. M. Anderson for the appellant.

Tilley K.C. for the respondent.

¹ 35 D.L.R. 318; 2 W.W.R. 294.