

Case No. 6,521.

HINES v. UNION PAC. R. CO.

{2 Dill. 269, note.}<sup>1</sup>

Circuit Court, D. Nebraska.

May Term, 1873.

NEGLIGENCE—FELLOW SERVANTS.

Action by a brakeman against the company; the petition charging that the plaintiff, as brakeman, was engaged in coupling cars, and that the engineer in charge of the moving section of the train carelessly backed it with such force and speed as to cause the plaintiff's hand to be crushed, and that the engineer was incompetent, and the defendant knew it.

Mr. Redick, for plaintiff.

Poppleton & Wakeley, for the company.

Before DILLON, Circuit Judge, and DUNDY, District Judge.

THE COURT directed the jury, in substance, as follows:

1. That the engineer and brakeman, being both at their posts and in the line of their duty at the time, are fellow-servants, within the meaning of the rule which exempts the employer from liability to one servant for the fault of another, and that the general rule applied to the case under the pleadings and proof, unless the company was to blame for having an incompetent or improper person as engineer.

2. That no mere negligence on the part of defendant's engineer as to the rate of speed and force with which the train was run at the time of the accident will impose any liability on the defendant for the injury to the plaintiff.

3. That the plaintiff alleges and must show that the accident was caused by the negligence of the engineer, as charged in the petition, and also that the company was guilty of negligence, or want of reasonable care in the employment of an incompetent engineer, or in retaining him in its employment after notice of his incompetency, or of facts and circumstances from which it reasonably appears that his incompetency ought to have been discovered, or from which notice thereof may reasonably be inferred.

There was a verdict and judgment for the defendant.

{In 2 Dill. 269, this case is published as a note to [Fort v. Union Pac. R. Co.](#), Case No 4,952.}

<sup>1</sup> [Reported by Hon. John F. Dillon, Circuit Judge, and here reprinted by permission.]