

DIVISIONAL COURT.

AUGUST 25TH, 1911.

KIRKBY v. BRIGGS.

Master and Servant—Injury to and Consequent Death of Servant—Workman in Factory—Findings of Jury—Defective Method of Adjusting Belt—Workmen's Compensation for Injuries Act—Damages.

Appeal by the defendants from the judgment of SUTHERLAND, J., in an action tried at Brockville with a jury, in favour of the plaintiff, the widow of a man who was killed while in the defendants' employment in their factory, in an action to recover, for herself and her two children, damages for his death. The man was killed by a blow from a stick which he was using in attempting to adjust a belt upon a fixed pulley on the main shaft in the defendants' factory, while this shaft was rapidly revolving.

The questions submitted to the jury, with their answers, were as follows:—

1. Were the injuries which occasioned the death of the deceased caused by any negligence of the defendants? A. Yes.
2. If so, wherein did such negligence consist? A. (1) In defect of pulley on main shaft; (2) by defective way of adjusting belt; (3) by not having sufficient room for men while in the discharge of their duties; and (4) for poor system of management.
3. Were the deceased's injuries caused by any negligence on his part? A. No.
4. If so, wherein did the negligence consist?
5. Could the deceased, by reasonable care, have avoided the accident? A. We think not.

The jury assessed the damages at \$1,600, apportioning \$800 to the plaintiff and \$400 to each child.

The appeal was heard by FALCONBRIDGE, C.J.K.B., BRITTON and RIDDELL, JJ.

J. A. Hutcheson, K.C., for the defendants.

G. F. Henderson, K.C., for the plaintiff.

FALCONBRIDGE, C.J.:—In the answer to question 2, No. (2) alone requires to be considered.

No. (1), the small defect or slip out of the rim of the pulley, was practically abandoned by Mr. Henderson at the argument.

No. 3, a mere temporary obstruction, not affecting the permanent condition of a way is not a defect in the condition of a