

ing their coal and distributing it to different places upon their coal docks and on their extensive coal storing premises. This work was done by means of a hoisting gear and tramway system—hoisting coal in buckets or skips from a lower level and conveying it to any place desired, emptying coal from the full buckets or skips, and returning empties to be refilled, etc.

The shovellers below were doing their work, apparently under the direction of a man, also in the employ of the defendants. This man was called the "hooker," and he, from below, directed the motorman or engineer above when to stop, when to lower the empties, when and where to stop to hoist the full buckets. At the time of the accident the plaintiff was working on a night shift. In general, the way the thing was done was to stop the hoist directly over the full bucket; and, when the bucket was hooked on to the chain from the crane, or whatever that may be called, the signal was given to hoist. On this 8th May, 1911, the motor was not directly over the bucket, but rather over the plaintiff, who, I have said, was working below; and, when the bucket began to move up, it swung from the vertical line, and struck the plaintiff, wounding him and making a wound  $7\frac{1}{2}$  inches long, directly across and completely through the wall of the abdomen—of course, severely wounding the plaintiff. The marvel is, that he was not killed.

I find that this man called the "hooker," but who had other duties put upon him, was at the time in superintendence for the defendants in and about the work of placing the buckets, lowering the empties, hoisting the full buckets, and all that pertained to that work. I find that this man so in superintendence was guilty of negligence which caused the accident to the plaintiff. He was, in my opinion, a person in the service of the employer, who had at that time superintendence intrusted to him, and this negligence was in the exercise of such superintendence, within the meaning of sec. 3, sub-sec. 2, of the Workmen's Compensation for Injuries Act. What this man did was, as it seems to me, within sec. 2, sub-sec. 1, which gives the meaning of superintendence.

I also find that the system of the defendants in the moving of this coal at night was defective, and was likely to be attended with accident such as the accident to the plaintiff now complained of. The system was defective in not having the coal piles so lighted that the motorman could always see when the buckets were to be hoisted—that they would be hoisted vertically. The defendants were negligent in adopting a system without proper protection, so far as reasonably possible, for