

Held, that the defendants were not liable on this head unless there was a want of reasonable care on their part in using the appliance which they used; and it was no evidence of such want of reasonable care merely to show that a safety catch of a different pattern was in use ten years ago by others, or even that it was at present in use, and that a witness thought it might have prevented the accident; and, as no negligence was shewn, the defendants were not liable either at common law or under the Workmen's Compensation for Injuries Act.

By s. 15, s-s. 4, of the Factories Act, R. S. O., c. 208, "All elevator cabs or cars, whether used for freight or passengers, shall be provided with some suitable mechanical device, to be approved by the inspector, whereby the cab or car will be securely held in the event of an accident," etc.

There was no evidence to show whether this particular safety catch had been approved by the inspector.

Held, that the onus was upon the plaintiff to prove that the catch had not been approved; and if it had neither been approved nor disapproved, the question still was whether the catch used was of such a character and pattern as to make the use of it unreasonable.

Britton, Q.C., for the plaintiff.

E. D. Armour, Q.C., for the defendants.

Chancery Division.

Boyd, C.]

[June 6.

STOTHART v. HILLIARD.

Easement—Prescriptive rights—Dominant and servient tenements—Rectory lands—Lease of servient tenement—Unity of possession—Suspension of easement—Joint owners of mill dam—Injunction—Damages.

In an action, begun in 1889, for an injunction to restrain two joint owners of a mill dam, having mill properties respectively on the east and west sides of a river, from damming back water against the plaintiff's land, and for damages, the defendants asserted an easement gained by prescription under R. S. O., c. 3, through user since 1838 and 1842. The plaintiff's land

was patented in 1836 as glebe land appurtenant to a rectory, and the title vested in the rector and his successors as a corporation sole. In 1863 an Act was passed empowering the fee simple of this rectory land to be sold. The mill-owner on the west side of the river was in possession as lessee from 1866 till 1887 of the glebe land, which the plaintiff purchased in 1875, but did not get possession of till 1887.

Held, that no prescriptive right in the defendants to an easement over the plaintiff's land could have arisen prior to 1863, because the rector could not have alienated the fee, and an actual grant of the easement in perpetuity or in fee would have been invalid.

2. That the mill-owner on the west side had gained no prescriptive right since 1863, because between 1866 and 1887 there was such unity of possession in both dominant and servient tenements as caused a suspension of the easement.

3. That the mill-owner on the east side was not affected by the lease of the servient tenement, his user having been begun adversely, and the easement having been enjoyed by him as of right continuously and uninterruptedly for twenty years before action.

4. That the defendants being joint owners of the dam, the defendant on the east side was entitled to the supply of water as furnished by the existing dam all the way across the river, and therefore the plaintiff's remedy against the defendant on the west side was not an injunction, but damages.

Moss, Q.C., and *R. E. Wood*, for plaintiff.

D. W. Dumble and *C. J. Leonard*, for defendant Hilliard.

Wallace Nesbitt and *R. M. Dennistoun* for defendants Auburn Woollen Co.

ROBERTSON, J.]

[Aug. 11.

IN RE GING.

Building societies—R.S.O., c. 169, s. 47—"Obligation"—Moneys deposited upon savings bank account—Reasonable doubts—Petition—Costs.

A person died in the United States of America having moneys to his credit deposited upon savings bank account with two building societies doing business in Ontario, incorporated under R.S.O., c. 169. An administrator appointed by a Court in the foreign country applied to the building society to have the moneys transferred