

the top of a retaining wall of a canal which was being constructed by defendants. The plaintiff, in accordance with instructions from the superintendent of the works, went to a part of the canal bed where there were long planks, and brought and delivered three of them to Clairmont, who was on the top of the wall, and who placed them in position. The place where these three planks were required to be delivered was unobstructed and safe. Plaintiff then went and procured the fourth plank, and carried it a portion of the distance back, when, noticing Clairmont on the top of the wall, at about 50 feet from the place where the plank was to be used, he made a step or two in the direction of the wall where Clairmont was, and stepped on a board or plank, and a nail therein went through the sole of his boot and into his foot, causing a severe injury.

G. H. Watson, K.C., and L. V. O'Connor, Lindsay, for plaintiff.

E. E. A. DuVernet, for defendants.

MACMAHON, J., held that the course plaintiff took and the ground he traversed with the plank to reach the wall was, according to plaintiff's own evidence, not a "way" at all, as at that point the bottom of the canal was dangerous by reason of the large number of pieces of plank lying about with nails in them. Having made use of a place that was dangerous and in no sense a "way," when his employer had furnished a safe place at the point where the planks were required to be delivered, the employer was not liable. *Howe v. Finch*, 17 Q. B. D. at p. 190, *Pritchard v. Lang*, 5 Times L. B. 639, and *Bolch v. Smith*, 7 H. & N. 737, referred to.

Action dismissed with costs.

BOYD, C.

JUNE 24TH, 1903.

TRIAL.

WARREN v. MACKAY.

*Ship—Charter—Voyage—Damages for Short Cargo—Demurrage—Delay and Detention—Counterclaim—Inferior Cargo.*

This action was brought by the respective owners of three vessels, the Birkhead, the C. H. Burton, and the J. G. Blain, against R. O. & A. B. MacKay. The plaintiffs alleged that defendants chartered the three vessels to carry 2,400 tons of coal from Cleveland to Hamilton; that defendants gave plaintiffs only 2,053 tons to carry; that plaintiffs had to proceed to Hamilton with 2,053 tons only; and they claimed \$433.75 damages for short cargoes and \$1,575 for demurrage.