

power of sale for a mortgagor at all: his right is to look after his own interests first, but he is not at liberty to look after his own interests alone; and it is not right or proper or legal for him either fraudulently or wilfully or recklessly to sacrifice the property of the mortgagor, that is all.

The conduct of the respondent has been judged by the learned Chancellor according to that standard, and he has found that the respondent neither fraudulently nor wilfully, nor recklessly sacrificed the property of the appellant. With that conclusion I entirely agree.

I would dismiss the appeal with costs.

HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE, and HON. MR. JUSTICE HODGINS, agreed.

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SUPREME COURT OF ONTARIO.

1ST APPELLATE DIVISION.

JUNE 4TH, 1913.

FALCONER v. JONES.

4 O. W. N. 1373.

*Negligence—Fatal Accidents Act—Death of Employee—Unexplained Accident—Varying Theories—Nonsuit—Contributory Negligence—Findings of Jury.*

Action for damages for the death of one, W. F., while engaged at defendant's factory, operating a machine, through the alleged negligence of defendants. The belt supplying power to the machine at which deceased was working, had parted, and deceased was in the act of assisting the foreman in replacing it upon the pulley, when something struck him violently in the chest, instantly killing him. The evidence went to shew that it was, probably, a piece of wood which struck deceased, but as to its source, different theories were advanced. The jury found negligence on the part of defendants, and negatived contributory negligence on the part of the deceased.

MIDDLETON, J., *held*, 24 O. W. R. 18; 4 O. W. N. 709, that the jury's findings as to negligence were warranted by the evidence, though their theory of the accident was not, and entered judgment for the plaintiffs for \$1,650 and costs.

SUP. CT. ONT. (1st App. Div.) dismissed defendant's appeal with costs.

Appeal by defendants from the judgment of MIDDLETON, J. (24 O. W. R. 18; 4 O. W. N. 709), based upon the answers of a jury finding them and their millwright guilty of negligence, which caused the death of plaintiff's husband through the starting of a shaft and pulleys when they ought not to have moved.