

shaft was revolving, did not appear. Plaintiff . . . gave no evidence of defective construction, and, so far as the evidence for the defence explained the construction, it went to shew that the knife could not fall unless the shaft was revolving at too high a rate of speed. Whose neglect that would be, whether of plaintiff himself or some other person, there was no evidence, or whether in fact the machine was being run at too great a speed, nor was there any evidence of any defect, repair of which might have prevented the accident.

There should, in my opinion, be a new trial, and it would be more satisfactory, I think, that on the second trial the jury or the Judge, if the case is tried without a jury, should see the machine itself and the operation of its several parts in order to understand and apply the evidence. It may be that a clearer view of the operation of what is spoken of as the friction clutch and the spring or springs which it works with, will point to a cause of the accident and suggest the possibility of a condition of things in which the power might not be disconnected and the machine thrown out of gear in the complete revolution of the driving wheel.

The costs of the appeal and of the last trial to abide the event.

CARTWRIGHT, MASTER.

SEPTEMBER 18TH, 1903.

CHAMBERS.

BUCKINDALE v. ROACH.

Security for Costs—Costs of Former Action Unpaid—Instructions Given by Same Plaintiff—Action Brought in Name of Wrong Person.

Motion by defendant for security for costs or to stay proceedings until the costs of a former action should be paid. Two years earlier an action for malicious prosecution had been brought against defendant in the name of Josiah Buckindale, the father of William Buckindale, the present plaintiff. This was a mistake of the solicitor, who had been instructed by the present plaintiff and only by him. On the action coming on for trial on 6th March, 1903, it was necessarily dismissed with costs. These costs were taxed at \$91.80, and had not been paid. On 26th March the present action was begun. The case was ready for trial when the motion was made. No reason was given for the delay in moving,