

If they succeeded in this, as seemed most probable, the case could be tried in June at Hamilton, or even entered at Toronto if both parties agreed. But, as the case stood, the motion must be dismissed with costs to the defendants in any event. F. Morison, for the plaintiff. W. C. Chisholm, K.C., for the defendants.

DUNLOP v. CANADA FOUNDRY Co.—TEETZEL, J.—MARCH 28.

Master and Servant—Injury to Servant—Workmen's Compensation for Injuries Act, sec. 3 (5)—Negligence of Fellow-servant—Person in Control of Machine upon Tramway—Findings of Jury.—Action by James Dunlop, an infant, for damages for personal injuries sustained by him, while working for the defendants in their foundry, by reason of a steel girder falling on him and crushing and breaking one of his legs, owing, as he alleged, to the negligence of the defendants or their servants. The action was tried with a jury. The learned Judge said that, in his opinion, there was no evidence to justify a finding of liability at common law; and he also thought that the answers of the jury to the questions submitted did not entitle the plaintiff to judgment at common law. The jury assessed the damages at \$1,700 if there was a common law liability, and at \$1,500 if there was liability only under the Workmen's Compensation for Injuries Act. The answers of the jury to the 5th and 6th questions entitled the plaintiff to judgment under the Act, because the workman in charge of the hoist was, within the ruling in *McLachlin v. Ontario Iron and Steel Co.*, 20 O.L.R. 335, a person having the charge or control of an engine or machine upon a railway or tramway, within the meaning of clause 5 of sec. 3 of the Act, and that the defendants were answerable for his negligence. The answers of the jury to questions 9 and 10, finding the defendants' sub-foreman guilty of the negligence therein stated, entitled the plaintiff to judgment. Judgment for the plaintiff for \$1,500 damages and costs. I. F. Hellmuth, K.C., and D. Urquhart, for the plaintiff. G. H. Watson, K.C., and B. H. Ardagh, for the defendants.