

APRIL 19TH, 1915.

*HULL v. SENECA SUPERIOR SILVER MINES LIMITED.

Master and Servant—Death of Servant—Miner Falling into Shaft of Mine—Action under Fatal Accidents Act—Negligence—Contributory Negligence—Evidence—Findings of Jury—Employment of Incompetent Hoist-man—Defective System—Mining Act of Ontario, R.S.O. 1914 ch. 32, sec. 164, rules 45, 98—Cause of Accident.

Appeal by the defendants from the judgment of LENNOX, J., 7 O.W.N. 403, upon the findings of a jury, in favour of the plaintiff for the recovery of \$2,100 damages, in an action by the widow of Regis Hull to recover damages for his death while working for the defendants in their mine, by reason of the negligence of the defendants, as the plaintiff alleged. Hull was working on the top deck of the shaft-house, and fell down the shaft.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

H. E. Rose, K.C., and R. S. Robertson, for the appellants.

A. G. Slaght, for the plaintiff, respondent.

LATCHFORD, J. (after stating the facts):—The jury find that there was no negligence on Hull's part, thus negating the contentions of the defence as to carelessness or suicide. How the accident happened is obvious. In the interval between Hull's removal of a loaded car from the hoisted cage and his return with an empty one, the cage was hoisted without his knowledge, and he shoved the empty car into the opening, not clearly discernible in the dim light, where he had left the cage and still expected it to be, and was dragged down to his death.

As against the defendants, two grounds of negligence causing the accident are found—not having an experienced man to shew Hull the regular way of performing his duty, and not leaving an experienced man with Davis (the man in charge of the hoist) until Davis well understood the hoist, which, in the opinion of the jury, he did not understand.

It may be doubtful whether the finding that the absence of instruction contributed to the accident is warranted by the evidence. Much stronger inferences against the defendants were,