

Divisional Court.] SHEA v. INGLIS. [Dec. 12, 1905.
Master and Servant—Workmen's Compensation Act—Superintendence.

The plaintiff, who was a lad of eighteen, was engaged with two men in rivetting the plates of a boiler. It was the duty of one of the three to heat the rivets, of the second to place them in position, and of the third to fasten them by means of a hydraulic hammer which he put in operation by a lever. This man directed the plaintiff to go inside the boiler to hold back a loose stay which was coming in the way of the rivets, and the plaintiff while in the boiler was injured.

Held, that the man who was using the hammer was in effect necessarily entrusted with superintendence of the whole operation, that to his orders the plaintiff was bound to conform, and that the accident having happened, as was found, owing to this man's negligence, the plaintiff was entitled to damages.

Garland v. City of Toronto (1896) 23 A.R. 238 distinguished.

DuVernet and E. H. Greer, for appellants. *W. T. J. Lee*, for respondents.

Anglin, J.] [Dec. 15, 1905.
BARRIE v. TORONTO & NIAGARA POWER CO.

Practice—Judgment on admissions—Payment into Court of part "in full satisfaction"—Payment out—Rules 419, 616.

The plaintiffs appealed from an order of the Master in Chambers dismissing their application under Rule 616 for judgment upon alleged admissions in the pleadings with leave to proceed for the balance of their claim not admitted, and for payment out of Court of a certain sum paid in by the defendants with their statement of defence under Rule 419. The sum thus paid in by the defendants, they alleged in their pleading to be "balance due in respect of all the said matters," and they brought it into Court "in full satisfaction of the plaintiff's claim therein."

Held, 1. The plaintiffs were not entitled to judgment with leave to proceed for the balance of their claim, and for payment out of the money paid in, for by moving as they did they accepted the statement of defence, and must take the negative as well as the affirmative allegations therein contained, and were not entitled to the benefit severed from the accompanying statement that the account admitted was the entire sum due.

2. The money should not be paid out to the plaintiffs under Rule 419 for whatever discretion the Court may have by virtue