SUPREME COURT OF ONTARIO.

SECOND APPELLATE DIVISION. MARCH 31ST, 1914.

LINAZUK v. CANADIAN NORTHERN COAL & ORE DOCK CO.

6 O. W. N. 150.

Negligence—Death of Workman — Breach of Statutory Duty—Contributory Negligence—Finding of Jury—Evidence—Dismissal of Action.

BRITTON, J., 25 O. W. R. 584; 5 O. W. N. 642, *held*, that contributory negligence is a defence to an action for negligence, even where the accident was occasioned by the neglect of the employer to perform a statutory duty.

SUP. CT. ONT. (2nd App. Div.) reversed above judgment, and ordered a new trial.

Appeal by the plaintiff from a judgment of HON. MR. JUSTICE BRITTON, 25 O. W. R. 584.

The appeal to the Supreme Court of Ontario (Second Appellate Division) was heard by HON. SIR WM. MULOCK, C.J.Ex., HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE LEITCH.

H. E. Rose, K.C., for the appellant.

W. N. Tilley, for the defendants, respondents.

THEIR LORDSHIPS (v.v.) set aside the above judgment and ordered a new trial; costs of the first trial and of this appeal to be costs in the cause.

HON. MR. JUSTICE BRITTON. MAY 30TH, 1914.

SIMBERG v. WALLBERG.

6 O. W. N.

Negligence—Buildings—Demolishing—Workman Injured—Action by Administrator under Workmen's Compensation Act.

Where the evidence shewed that a workman was injured while not in his place nor doing the work assigned to him by the contractor and there being no evidence of negligence on part of owner of property,

BRITTON, J., *held*, that there could be no recovery against the contractor under Workmen's Compensation Act nor against the owner.

Action by the administrator of the estate of Jacob Simberg for damages for Simberg's death, which occurred on the 7th October, 1913. He left a wife and five children.