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S.C.

1912

SMOLIK

F.

JOHN
WALTERS,
LIMITED.

Harvey, C.J.

crushed up and the roller jumped up) and a splinter from it driven with such force as to cause the injury.

The plaintiff was not an expert and spoke little English, but when he was employed the foreman pointed out to him the danger of bolts becoming fast and shewed him how to raise the roller and pointed out the necessity of keeping out of the way when they were forced back. After he was employed each day the foreman watched his work, though apparently he found it unnecessary to give him any further instructions. After the accident a shield was placed on the side of the roller which, no doubt, deflected many splinters, but if the accident were caused as above indicated it could have had no effect in preventing this accident even if it had been in place then. A heavier weight was placed on the roller also, but it is doubtful whether it could have had any effect for, from the evidence, it is clear that there is no way of avoiding bolts becoming stuck and being driven back.

The expert mentioned says:—

A lath machine, the best you can do with them, the best guard you can put on, they are a dangerous machine to deal with.

And again:—

Q. That is one of your principal dangers, being in the way when a bolt flies out?

A. Yes.

He also says:—

If I were operating that machine, or even managing it, I would put a shield, probably a 16-inch shield, right on that place you see there, and I would let it go down so low that if the feed did rise it would catch the flying parts driven back by the saw.

Whatever the witness intended, it is apparent that, since a sufficient space must be left open to permit the bolt to pass in and also to let it pass back when it gets fast, no shield could guard that space which the evidence satisfies me is most probably the space through which the splinter that did the injury came.

In *McArthur v. Dominion Cartridge Co.*, [1905] A.C. 72; *Dominion Natural Gas Co. v. Collins*, [1909] A.C. 640, and *Caledonia Milling Co. v. G. T. R. Co.*, 14 O.W.R. 394, the jury had found negligence causing the injury and the Court held that there was evidence to justify the finding. The question I have to consider here is not whether there is evidence which would justify a jury's finding of negligence, but whether on the facts of the case I, as a juror, would conclude that the defendants had been guilty of negligence from which the injury resulted, and I have no hesitation in saying that I quite agree with the trial Judge that the evidence does not establish negligence. I do not find it necessary to consider whether any of the suggested improvements ought reasonably to have been made by the defendants before the accident for, in my opinion, even if they