

must have happened before the executory devise over could take effect.

Judgment dismissing action with costs.

APRIL 27TH, 1903.

DIVISIONAL COURT.

BISNAW v. SHIELDS.

*Master and Servant—Injury to Servant—Death—Negligence of Master—Evidence—Res Ipsa Loquitur.*

Appeal by plaintiff from judgment of MEREDITH, C.J., dismissing action brought by widow of Joseph Bisnaw to recover damages for his death, which she alleged was caused by the negligence of defendants.

The deceased had been for some years in the employment of defendants at a derrick used by them for hoisting coal out of vessels on the river St. Lawrence and loading it upon cars. The deceased was going down a ladder when he was struck on the head and killed by a piece of coal which fell from some part of the derrick.

The appeal was heard by FALCONBRIDGE, C.J., STREET, J., BRITTON, J.

J. M. Clark, K.C., for plaintiff.

E. E. A. DuVernet and J. J. Mahaffy, Streetsville, for defendants.

STREET, J.—Assuming the fact to be that this derrick had been worked for 15 years with the same appliances and in the same condition, and that during that time no coal had fallen over the platform until the fall of the piece by which the plaintiff was killed, is there reasonable evidence of negligence on the part of defendants? The Chief Justice has said that these facts negative any negligence. With great respect, I feel bound by authority to come to the opposite conclusion: *Scott v. London Dock Co.*, 3 H. & C. 596; *Kearney v. London. Brighton, etc., R. W. Co.*, L. R. 6 Q. B. 759.

There was also, I think, evidence of negligence in another respect. The opening in the platform through which the coal was shot from the upper hopper into the lower one was marked and scored all around its edges by the coal striking as it passed down; and witnesses for defendants also stated that pieces of coal occasionally escaped on to the platform, instead of passing through the opening, although they said the pieces were not large. Now, the edge of the platform was only 3 feet 9 inches from the nearest edge of the opening, and there was nothing to prevent a piece of coal which