

power to dispose of the land; and the non-registration is explained by considering the kind of man Robert was—shiftless and easily imposed upon. The conduct and acts of Henry Hurl Humphries jun., and statements made by him as to Robert's ownership, are inconsistent with the case plaintiff sets up. Robert had the use and enjoyment from 1852 until his death, and the account kept by Henry Hurl Humphries jun., after Henry Hurl Humphries sen. handed him the deed of 1852, as well as the fact that permanent improvements were made and their cost deducted from Robert's rents, are strong circumstances in the conclusion that Robert was the real owner. Henry Hurl Humphries jun. does not appear to have made any claim to the land. The handing of the deed of 1852 over to Robert, which does not, however, appear to have been proved, would not, even if proved, have constituted a breach of trust. Robert had frequently demanded it, but it is to be regretted that defendant did not frankly inform his co-executor what had been done. The testator, having no estate in the land, nor being in possession, nor claiming it, the defendant was entitled to a conveyance of it from Robert, and is not a trustee for anyone. Action dismissed, but without costs.

E. B. Edwards, Peterborough, solicitor for plaintiff.

A. L. Colville, Campbellford, solicitor for defendant.

JANUARY 13TH, 1902.

DIVISIONAL COURT.

BROTHERSON v. CORRY.

*Master and Servant—Negligence of Master—Sufficient Evidence of, for Submission to Jury—Res Ipsa Loquitur.*

Walsh v. Whitely, 21 Q. B. D. at p. 378; Moffatt v. Bateman, L. R. 3 P. C. 115, approved.

*Per* BRITTON, J., Cripps v. Judge, 13 Q. B. D. 583, should be followed.

Motion by plaintiff to set aside nonsuit entered by LOUNT, J., in an action for negligence, tried at Peterborough, and for a new trial. Action by Andrew Brotherson, a labourer of the township of Otonabee, against James A. Corry, and E. G. Laverdure, contractors for the construction of a section of the Trent Valley Canal, to recover damages for injuries received by plaintiff while engaged in working for defendants in such construction. A derrick used in the work fell upon plaintiff, owing to the alleged negligence of defendants in not sufficiently supporting the derrick, and by reason of a defect therein.