

Held, affirming the judgment of the Court of Appeal, that the only matters in issue being matters of fact which were found in favor of defendants by the trial judge, who saw and heard the witnesses, and was the most competent person to decide these questions, and his judgment having been affirmed by the Court of Appeal, it should not be disturbed by this Court.

Appeal dismissed with costs.
F. E. Titus for the appellant.
Northrop for the respondent.

SUPREME COURT OF JUDICATURE
 FOR ONTARIO.

COURT OF APPEAL.

From C.P.D.] [June 28.
 ANDERSON *v.* CANADIAN PACIFIC RY. CO.

Railways—Destruction of luggage—Act of God—Limitation of action—R.S.C., c. 109, s. 27.

This was an appeal by the defendants from the judgment of the Common Pleas Division, reported 17 O.R., 747, and came on to be heard before this Court (HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A.) on the 15th of May, 1890.

The appeal was limited to two grounds: (1) That the accident was caused by the act of God, or *vis major*; (2) that the defendants were protected by the limitation clause, R.S.C., c. 109, s. 27, the accident having taken place more than six months before action.

As to the first point the Court agreed with the Court below, and thought that the finding of the jury was fully justified by the evidence. Upon the second point the appellants also failed, BURTON and MACLENNAN, JJ.A., adhering to the opinion expressed by them in *McArthur v. The Northern and Pacific Junction Ry. Co.*, 17 O.R., 88, that the section was *ultra vires*, and HAGARTY, C.J.O., and OSLER, J.A., thinking that it did not apply to an action of contract, though not fully discussing the question, as such discussion was unnecessary.

Appeal dismissed with costs.
Robinson, Q.C., and *G. T. Blackstock*, for the appellants.

W. Nesbitt and *A. W. Aytoun-Finlay* for the respondent.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Ct.] [June 27.

BRIGGS *v.* SEMMENS.

Way—Severance of tenement by devise—Reasonable enjoyment of parts devised—Necessary rights of way.

Upon the severance of a tenement by devise into separate parts, not only do rights of way of strict necessity pass, but also rights of way necessary for the reasonable enjoyment of the parts devised, and which had been and were up to the time of the devise used by the owner or the entirety for the benefit of such parts.

Moss, Q.C., and *Lynch-Staunton*, for the plaintiff.

J. W. Nesbitt and *M. Malone* for the defendant McDonough.

McBrayne for defendant, Semmens.

Divisional Court.] [June 27

BLACK *v.* ONTARIO WHEEL CO.

Master and servant—Accident to servant—Fall of elevator—Negligence—Master's knowledge of defects—Want of reasonable care—Common law liability—Workmen's Compensation for Injuries Act—Factories Act, R. S. O., c. 208, s. 15, s-s. 4.

In an action by a workman against his employer to recover damages for injuries sustained owing to the falling of the cage of an elevator in the defendants' factory, the negligence charged was in the manner in which the heads of the bolts were held, and in the nature of the safety catch used upon the cage.

There was no evidence to show that the defendants were, or should have been, aware that the bolts were improperly sustained. They had employed a competent contractor to do this work for them only a few weeks before, and it was not shown that the alleged defect might readily have been discovered.

Held, that the defendants were not liable upon this head.

Murphy v. Phillips, 35 L. T. N. S., 477, distinguished.

The safety catch was made for the defendants by competent persons, and there was no evidence that it was not one which was ordinarily used.