

BRITTON, J.

OCTOBER 1ST, 1915.

## \*GARMENT v. CHARLES AUSTIN CO. LIMITED.

*Master and Servant—Injury to Servant—Remedy — Action — Application under Workmen's Compensation Act, 4 Geo. V. ch. 25(O.)—Jurisdiction—Findings of Jury—Negligence —Contributory Negligence—Damages—Judge's Charge.*

The plaintiff, who was employed by the defendants, was injured on the 23rd January, 1915, by falling into an elevator shaft in their store or warehouse, and brought this action to recover damages for his injuries.

The defendants, by a defence added at the trial, set up that the Workmen's Compensation Act applied, and that the plaintiff had no right of action—that his remedy, if any, was by an application to the Board under the Act, 4 Geo. V. ch. 25 (O.), as amended by 5 Geo. V. ch. 24.

The action was tried at Chatham with a jury, who found the facts in favour of the plaintiff, and assessed his damages at \$500.

R. L. Brackin and B. L. Bedford, for the plaintiff.

O. L. Lewis, K.C., and Ward Stanworth, for the defendants.

BRITTON, J., referred to and considered secs. 5, 15, 69, 105, 106, 107, 108, 109, and clause 36 of schedule I. of the Act; and said that the plaintiff's claim was not one which required him to go before the Board—that the Court had jurisdiction to entertain the action.

The jury found negligence on the part of the defendants and contributory negligence on the part of the plaintiff—no doubt they took the contributory negligence into account in assessing the damages, as they were instructed in the charge.

Judgment for the plaintiff for \$500 with costs on the Supreme Court scale.