

man. Defendant hired from the plaintiff a team of horses with a driver for use in moving the engine about and drawing straw or grain during the threshing work. While threshing was going on one day sparks from the engine set fire to a stack and the separator being thereby placed in danger the plaintiff's driver attached his horses to it for the purpose of hauling it into a place of safety, but the fire spread so rapidly and unexpectedly before the separator could be moved or the horses detached that they were severely burned and had to be killed. The judge, who tried the case without a jury, found that the fire had been caused by negligence on the part of the defendant's servants in their mode of managing the threshing in a high wind. He also found that the horses had been attached to the separator either in obedience to a call from the defendant's foreman or under his personal supervision, and that there was no negligence on the part of the plaintiff's driver.

Held, 1. The evidence amply warranted the finding of negligence and unless the plaintiff's driver was guilty of contributory negligence the defendant was responsible for the loss of the horses.

2. Following *Connell v. Prescott*, 20 A.R. 49; 22 S.C.R. 147, that the driver was not guilty of contributory negligence in exposing the horses to danger, as it was not obvious and he acted either on the orders of the defendant's foreman or in obedience to a natural impulse to try to save the defendant's property. Seeing the separator in danger of being burnt the driver acted promptly without time for reflection. He did not see that there was any danger in attaching the horses, and the circumstances were not such as to make the danger obvious, and the horses were attached to the separator with the full concurrence and under the supervision of the foreman, if not in response to his actual request. Appeal dismissed with costs.

C. H. Campbell, K.C., A.G., for plaintiff. *Pitblado*, for defendant.

Province of British Columbia.

SUPREME COURT.

Drake, J.]

[Dec. 23, 1902.

IN RE LENORA MOUNT SICKER COPPER MINING Co.

Winding-up—Leave to bring action—Secured creditors—Proving claims—
R.S.C. 1886, c. 129, ss. 62, et seq.

Summons on behalf of mortgagees to commence a foreclosure action against a company which had been ordered to be wound up. For the mortgagees it was contended that they were entitled to exercise an option