

## HIGH COURT OF JUSTICE.

*Chancery Division.*

Full Court.]

[Feb. 16.

HEADFORD v. MCCLARY MANUFACTURING COMPANY.

*Employer's Liability—Master and servant—Contributory negligence—Going out of way to work.*

Action of negligence for damages received by the plaintiff while in the employment of the defendants.

The plaintiff, in going to that part of defendant's building where his work was, had to pass through a long room, the passage being nearly straight until within ten or twelve feet of a hoist, where it turned to the left. The plaintiff was quite familiar with this passage, but on the occasion in question, instead of turning to the left as he should have done, when he reached within ten or twelve feet of the hoist, having his attention arrested by seeing a man at work up near the ceiling repairing the hoist, he walked straight into the hole, and fell to the cellar below, thus causing the injury. There was no lack of light on the occasion. As a rule, there was a bar protecting the entrance to the hoist, but on the occasion in question this bar had been removed on account of the repairs which had to be done.

*Held*, that the verdict on the trial, which was for the defendant, must be set aside and the action dismissed upon the ground of contributory negligence on the part of the plaintiff.

*Gibbons* for the defendants.

*Greer* for the plaintiff.

MEREDITH, J.]

[Feb. 9.

MCMILLAN v. MCMILLAN.

*Mortgagor and mortgagee—Assignment of Mortgage—Payments made by assignee before assignment.*

Appeal from the report of the Master at Cornwall.

From 1883 to 1890, A. J. McMillan, for some reasons not fully explained, made certain payments upon a mortgage given by a certain party upon certain lands. In 1885, a second mortgage was given upon the lands to a third person. In 1890, A. J. McMillan paid the sum of \$97.35, being the balance claimed by the mortgagees of the first mortgage as due to them at that time, and took an assignment of the said mortgage. He now claimed priority over the second mortgage, not only in respect to the \$97.35 and subsequent interest, but also as to the former payments which, as above mentioned, he had made upon the mortgage prior to the assignment to him thereof.

*Held*, that he was only entitled to such priority in respect to the sum due or accruing due to the mortgagees at the time that he obtained his assignment, and not as to his former payments.

*W. H. Blake* for the appeal.

*Hoyles, Q.C., contra.*