

*Held*, that there was no breach of duty on the part of the defendants towards deceased who had undertaken to remedy the very defects that had caused his death, and the failure to discover them must be attributed to him.

The judgment appealed from (14 Man. L.R. 74) ordering a new trial was affirmed, but for reasons different from those stated in the court below.

Appeal dismissed with costs.

*Haggart*, K.C., for appellant. *Coutlee*, K.C., and *Phippen* for respondent.

B.C.]

HOSKING v. LE ROI No. 2.

[Dec. 9, 1903.

*Mining plans and surveys—Negligence of higher officials—Duty of absent owners—Operation of metalliferous mines—Common law liability—Employers Liability Act—R.S.B.C. c. 69, s. 3.*

The provisions of the third section of the "Inspection of Metalliferous Mines Act, 1897," of British Columbia, do not impose upon an absent mine owner the absolute duty of ascertaining that the plans for the working of the mine are accurate and sufficient and, unless the mine-owner is actually aware of inaccuracy or imperfections in such plans, he cannot be held responsible for the result of an accident occurring in consequence of the neglect of the proper officials to plat the plans up to date according to surveys.

The defendant company acquired a mine which had been previously worked by another company, and provided a proper system of surveys and operation and employed competent superintendents and surveyors for the efficient carrying out of their system. An accident occurred in consequence of neglect to plat the working plans according to surveys made up to date, the inaccurate plans misleading the superintendent so that he ordered works to be carried out without sufficient information as to the situation of openings made or taking the necessary precautions to secure the safety of the men in the working places. The engineers who had made the surveys and omitted platting the information on the plans had left the employ of the company prior to the engagement of the deceased, who was killed in the accident.

*Held*, TASCHEREAU, C.J., contra, that the employers not being charged with knowledge of the neglect of their officers to carry out the efficient system provided for the operation of their mine, could not be held responsible for the consequences of failure to provide complete and accurate plans of the mine.

*Held*, also, that negligence of the superintendent would be negligence of a co-employee of the person injured for which the employers would not be liable at common law, although there might be liability under the British Columbia "Employers' Liability Act" (R.S.B.C. c. 69, s. 3), for negligence on the part of the superintendent.