

the present defendants, it may become necessary to inquire into and to pass upon the title, the rights, and the interests of persons who refuse a consent without which plaintiffs are unable to bring them before the Court.

Having regard to the provisions of Rules 206 (1) and 202, the trial of this action should, in my opinion, be allowed to proceed.

This motion being in reality part of the trial, the costs will be costs in the cause.

JANUARY 19TH, 1906.

DIVISIONAL COURT.

CONNELL v. ONTARIO LANTERN AND LAMP CO.

Master and Servant—Injury to Servant—Negligence—Defective Condition of Machine—Findings of Jury.

Motion by defendants to set aside verdict and judgment for plaintiff for \$1,000 and costs in an action for damages for negligence, tried before MEREDITH, J., and a jury at Hamilton, and to dismiss the action or for a new trial.

Plaintiff was a workman in the service of defendants in their factory at Hamilton. He was injured while at work upon a punching machine, which came down and cut off three of his fingers. The negligence charged was that the machine was in a defective state, "repeating" or coming down without the operation of the treadle used for bringing it down. The jury found that there was a bad nut and a loose spring. The action was brought under the Workmen's Compensation for Injuries Act.

E. E. A. DuVernet, for defendants, contended that there was no evidence of negligence to go to the jury, or, if there was, that the verdict was against the weight of the evidence.

P. D. Crerar, K.C., for plaintiff.

The judgment of the Court (BOYD, C., CLUTE, J., MABEE, J.), was delivered by

BOYD, C.:—Having read all the evidence, it appears to me that the jury could well have found as they did, and that no good reason is shewn for our interference. It is proved that the machine in question was in a defective condition, evidenced by its repeating motion at unexpected times when no pressure was put on the treadle. Defendants' own witnesses prove that the machine, which was a very old one and long