

DECEMBER 23RD, 1913.

***VANVALKENBURG v. NORTHERN NAVIGATION CO.**

Negligence—Death by Drowning of Seaman Employed on Ship—Action for Damages Arising from—Falling Overboard Caused by Deceased's own Negligence—Legal Duty of Employers as to Rescue—Evidence—Contract of Hiring—Master and Servant.

Appeal by the plaintiffs, the parents of Charles Vanvalkenburg, deceased, from the judgment of LENNOX, J., at the trial, withdrawing the case from the jury and dismissing the action, which was brought to recover damages for the death by drowning of Charles Vanvalkenburg, while in the service of the defendants, by reason of their negligence, as alleged.

The deceased was a seaman on board the passenger steamer "Hamonic," owned and operated by the defendants. He fell overboard, when "skylarking," and was drowned.

The acts of negligence causing the accident, as charged by the plaintiffs, were a defective ladder and failure to adopt proper means to rescue the deceased when in the water.

The appeal was heard by MULLOCK, C.J. Ex., LATCHFORD, SUTHERLAND, and LEITCH, JJ.

J. R. Logan, for the plaintiffs.

R. I. Towers, for the defendants.

The judgment of the Court was delivered by MULLOCK, C.J. Ex. (after setting out the facts):—Even admitting that the ladder was defective, I fail to see that it played any part in causing the deceased to fall into the water. After safely descending by it from the promenade to the spar deck, he left the ladder and stood on the rail. There was nothing to prevent him stepping down upon the deck, where he would have been perfectly safe, but he remained on the rail; thus there was a new starting-point, unconnected with the ladder, for the subsequent occurrence, and I concur in the view of the learned trial Judge that the condition of the ladder did not cause the accident.

The evidence shews that the deceased was not on duty at the time of the accident, and had recklessly put himself in a position of great peril, and that his own want of care caused the accident. Thus the defendants are not responsible for his having fallen into the water.

*To be reported in the Ontario Law Reports.