

pened. The plaintiff was placing a slip on the lower plate, and finding it was not entering the guides properly, he endeavoured to throw off the impression with his left hand, at the same time trying to put the slip right. The result was that his right hand was so crushed and injured as to necessitate amputation.

J. Crerar, K.C., and W. R. Riddell, K.C., for appellants.
D'Arcy Tate, Hamilton, for plaintiff.

The judgment of the Court (OSLER, MACLENNAN, MOSS, GARROW, J.J.A.) was delivered by

Moss, J.A., who, after setting out the facts and evidence at length, concluded:—

If the plaintiff's right to maintain the action depended upon the claim that the foreman was incompetent to discharge the duties of foreman or superintendent, and that defendants were guilty of negligence in employing him in that capacity, I should be of opinion that the plaintiff had failed upon the facts. But upon other grounds of negligence the plaintiff is entitled to retain the judgment in his favour.

The evidence fully establishes that the plaintiff when put to work at the machine in question was, from lack of proper instruction and experience, not capable of working it properly and with safety to himself. The speed at which he was required to work it, and the difficulty of properly manipulating the impression bar, rendered it dangerous to him. He realized this after a short trial at second speed, and complained to the foreman, and informed him that he considered it dangerous, but was ordered to continue working at it and prevented from lowering the speed. The foreman admitted in evidence that he considered working at second speed with the plaintiff was too fast, because he was a little slower in picking up feeding than other boys. But he contended that the machine was not working at second speed, but only at first speed, and he said that if he had seen the plaintiff working at second speed he would have stopped him.

On the question of the speed there is not only the evidence of the plaintiff, but that of several witnesses who prove that the machine was running at second speed, and that fact must be found against the testimony of the foreman, with the consequent conclusion that he directed a boy whom he knew not to be competent or capable of doing it, to work the machine at second speed.

There is also evidence that the impression bar, though a useful contrivance, is not readily managed without a good deal of practice. The operator must learn to grasp it near