

Held, affirming the judgment appealed against (22 O.L.R. 204) that the trial Judge rightly refused to direct the jury as asked; that the evidence showed the injuries to plaintiff were the direct consequence of the negligence of the company, and that the verdict should stand. Appeal dismissed with costs.

Glyn Osler, for appellants. *Masten, K.C.*, for respondent.

Ont.]

RORISON v. BUTLER BROS.

[April 3.

Negligence—Damages—New trial—Volens.

In the construction of a tunnel under the Detroit River the respondent company had an apparatus for lifting material to the surface, consisting of a crane and cable with hook and buckets hauled up and down through an air shaft by an engine on the surface. At the top of the shaft a "tag man" was stationed to signal the engineer when to start or stop the engine and when to run fast or slow. The officers and men of the respondent company and of the Detroit River Tunnel Co. engaged on the same work were in the habit of coming to the surface through the air shaft and the "tag man" gave a special signal to the engineer when a man was coming up. R., an employee of the Detroit River Co. was attempting to come up on one occasion when the apparatus did not remain in the centre but was swinging around and in a narrow part of the shaft a block on the cable with a hook over which was a ring which R. was grasping, caught in the timbers on the side and the ring came off the hook, throwing him to the bottom of the shaft and causing his death. In an action on behalf of his parents the jury found the respondent company negligent in using an unsafe hook while allowing persons to use this apparatus, and also by the tag man not signalling the engineer to stop until the cable ceased moving. They assessed the damages at \$4,000, all for deceased's mother. The verdict was sustained by a Divisional Court, but the Court of Appeal granted a new trial on the ground that the question of volens on the part of R. should be passed upon by the jury.

Held, that as such question had been raised for the first time in the Court of Appeal a new trial should not have been granted on that ground.

The evidence as to damages was that the deceased gave his mother \$25 per month regularly and presents in goods or money that would make his whole contribution over \$500 a year.

Held, that \$4,000 was an excessive sum to give the mother,