

he had voluntarily assumed the risk of the work, the steel company should be held liable.

The steel company's appeal should be dismissed with costs, and the judgment against it for \$3,000 should stand, with costs of the action and appeal, including any costs payable by the plaintiff to the paper company.

MEREDITH, C.J.O., and MAGEE, J.A., agreed in the result arrived at by HODGINS, J.A.; but expressed no opinion on the question whether the deceased was, for the purpose of the work in which he was engaged when he met with his death, the servant of the steel company.

GARROW and MACLAREN, J.J.A. (dissenting), were of opinion, for reasons stated in writing by GARROW, J.A., that the appeal of the steel company should be allowed and the action against it dismissed, and that the appeal of the plaintiff should be allowed and judgment go in favour of the plaintiff against the paper company for the damages assessed by the jury.

*Judgment as stated by HODGINS, J.A.*

FIRST DIVISIONAL COURT.

JANUARY 24TH, 1916.

\*WADE v. CRANE.

*Contract—Sale of Brickyard—Default in Payment—Repossession by Vendor—Conversion of Bricks—Right to Possession of Plant Replacing Plant Sold—Construction of Contract—Purchaser-company — Winding-up Order — Rights of Liquidator—Promissory Notes — Counterclaim — Judicature Act, sec. 126—Set-off—Mortgage Debentures—Costs.*

Appeal by the defendant from the judgment of MIDDLETON, J., 8 O.W.N. 478.

The appeal was heard by GARROW, MAGEE, and HODGINS, J.J.A., and KELLY, J.

W. M. McClemon, for the appellant.

A. C. McMaster and J. H. Fraser, for the plaintiff, respondent.

GARROW, J.A., delivering the judgment of the Court, said that the trial Judge had reached the conclusion that a fair