

counter-shaft, about two feet above the ground-floor, which drove the shaper at which the deceased was working. This counter-shaft and the pulleys upon it were protected by a box-covering, which could be removed when necessary. The belt had loosened and been unlaced, and the deceased appears to have removed the box, taken up the belt, and carried it to the room occupied by the millwright, whose duty it was to repair it. After it was repaired, the latter took it to its proper place, put one end over a loose pulley upon the counter-shaft, and through an instrument called a "shifter," and had the deceased drop one end through the hole in the floor, while he went down and put the belt around the main shaft and up through the hole, and then came up and laced it up. He went down to the basement to put the belt upon the proper pulley, a large one, 36 to 40 inches in diameter, upon the main shaft. He says that, as he was leaving, "I told Falconer (the deceased) to keep away, that I am going down to throw the belt on." He went down, and, by means of a stick, threw the belt on this large pulley, which was making three hundred revolutions a minute. This should merely have set the belt and the loose nine-inch pulley on the counter-shaft in motion, without affecting the counter-shaft itself. Instead of this, the jerk down below threw the belt from the loose pulley over on the fixed pulley alongside of it, which was slightly larger, and was bevelled to facilitate the transference when it was desired to set the counter-shaft and the shaper in motion. The millwright came upstairs at once, and found the deceased lying on the floor, not far from the rapidly revolving counter-shaft and pulley, having received a blow which drove his ribs into his heart. There was no eye-witness of the accident.

There were two theories regarding it. One, put forward by the defence and accepted by the trial Judge, was that the deceased, seeing the belt going, tried to keep it in its place with a stick, which was found broken near where he was lying. The other, suggested by the plaintiff's counsel, that a piece of wood from a band-saw not far off had flown against the revolving pulley, which drove it violently against the deceased. This theory was adopted by the jury.

In my opinion, it is quite immaterial which of these two theories is correct, or whether they are both wrong. I believe that the case can be determined without deciding this question at all, it being common ground that the direct cause of the accident was the fact of the counter-shaft and pulley being