

MIDDLETON, J.

JANUARY 22ND, 1913.

NOKES v. KENT CO. LIMITED.

*Negligence — Injury to Engineer — Defective Condition of Machinery and Plant — Evidence — Findings of Jury — Motion for Nonsuit — Liability — Contractors — Installation in Premises of Purchaser — Non-acceptance by Purchaser.*

Action for damages for injuries sustained by the plaintiff by reason of the negligence of the defendants, as the plaintiff alleged.

The action was tried before MIDDLETON, J., and a jury, at Toronto.

Shirley Denison, K.C., and H. W. A. Foster, for the plaintiff.

H. H. Dewart, K.C., and Harcourt Ferguson, for the defendants.

MIDDLETON, J.:—At the trial I reserved the question of nonsuit, and allowed the jury to answer questions which, counsel agreed, would raise all the issues necessary for the determination of the action. After the jury had answered these questions, the matter was argued at length; the defendants contending that, upon the answers, the plaintiff was not entitled to judgment.

The action arises out of an accident occurring on the 14th August, 1911, by which a quantity of ammonia escaped from a refrigerating plant upon the premises of the Harry Webb Company Limited at Toronto, through the packing of the joint between the cylinder and cylinder-head of the condenser, forming part of the plant aforesaid.

The plaintiff was an engineer employed by the Harry Webb Company, and was at the time of the accident engaged in operating the machine aforesaid. The effect of the inhalation or attempted inhalation of the ammonia gas, and of the exertion incident to turning off the valves of the engine so as to prevent a further escape and injury to others upon the premises, was most serious, as the plaintiff was sixty-two years of age and in a somewhat enfeebled physical condition, because of the fact that he suffered from chronic bronchitis and arterial sclerosis. Ever since the accident he has been disabled and entirely unable to work, and is now practically a dying man.