

HON. MR. JUSTICE BRITTON.

MAY 30TH, 1912.

RAWLINGS v. TOMIKO MILLS LIMITED.

3 O. W. N. 1335.

Negligence — Master and Servant — Injury to Servant — Findings of Trial Judge—Accident not Negligence—Action Dismissed.

An action by Harry Rawlings, a former employee of defendants, to recover \$5,000 damages for injuries caused by a tramcar of lumber falling on him, which plaintiff alleged to be due to negligence of defendants. Defendants denied that plaintiff was in their employment or under their control, but alleged that he was in the employment of one Boyd, and that plaintiff was guilty of contributory negligence in acting contrary to express orders of his employer.

BRITTON, J., found that plaintiff's injuries were due to accident not negligence. Action dismissed without costs. Damages assessed at \$1,000 in case of appeal.

Tried at North Bay, without a jury.

G. A. McGaughey, for the plaintiff.

A. E. Fripp, K.C., for the defendants.

HON. MR. JUSTICE BRITTON:—The plaintiff was in the employ of one Boyd, who had a contract with the defendants for piling their lumber in their mill yard at Tomiko. The plaintiff was hired by defendants' foreman—but for Boyd, and plaintiff's wages although paid by defendants were paid for and charged to Boyd. I allowed the plaintiff to amend his statement of claim so that the facts could be set out as established by the evidence. The defendants owned and supplied to Boyd the ways, works, machinery, plant, and premises for the purpose of moving and piling the lumber mentioned. The defendants were responsible for the condition of the tracks and the whole plant as used by Boyd at the time of the accident to the plaintiff. On the 27th October last, a tram car was being used to transport lumber from the defendants' mill to places in the mill-yard where this lumber was to be piled. The floor of the car was about 7 feet above the rail—and lumber was piled from the car to a considerable height—10 feet or more above floor of car. The car laden to its full capacity was moved to the first piling place—and there one-half the lumber was taken off. The load was bisected longitudinally from top to bottom—and as the plaintiff stood at rear of car and facing the car—the half of the car to plaintiff's left was empty—and the half to plaintiff's right was full. The car was then to be