

says that there are not, in his opinion, any sufficient reasons for a departure from the ordinary rule; so the action is dismissed with costs. W. D. B. Turville, for the plaintiff. W. A. Dowler, K.C., for the defendants.

MELYNK v. CANADIAN NORTHERN COAL AND ORE DOCK CO.—
BRITTON, J.—DEC. 12.

Master and Servant—Injury to Servant—Negligence of Person in Position of Superintendence—Amendment at Trial—Findings of Jury.—The plaintiff, on the 26th May, 1911, was in the employ of the defendants and working for them in the hold of a large freight vessel lying at the defendants' dock at Port Arthur, assisting to unload coal. Planks, part of the vessel's equipment for carrying ore, not used at all in loading or unloading coal, were fastened just inside the hatchway at which coal was being taken out by means of "clam shell buckets." These buckets were, by means of machinery, lowered, empty and open, down into the vessel. They closed upon a large quantity of coal, and were then hoisted and transported to that part of the dock or coal pile where the coal was to be dropped. Generally the "clam shell bucket" passed up and down through the hatchway without striking or touching any part of the dock or hatchway of the vessel. On the day above-mentioned, the "clam shell bucket" did strike the planks mentioned, causing them to break away from their fastenings and to fall and strike the plaintiff, breaking his leg. The plaintiff brought this action to recover damages for his injuries, and it was tried at Port Arthur before BRITTON, J., and a jury. The learned Judge allowed the plaintiff to amend his statement of claim by charging negligence on the part of the person or persons having superintendence in the operating of the machinery hoisting coal out of the vessel. Questions were submitted to the jury, and they found that there was negligence which caused the injury to the plaintiff, and that such negligence was by a person in the service of the defendants who had superintendence intrusted to him, whilst in the exercise of such superintendence, and that the negligence was "careless operation of machinery by the person in charge of the work." They assessed the damages at \$800. Upon the findings of the jury, the learned Judge directed judgment to be entered for the plaintiff for \$800 with costs. A. E. Cole, for the plaintiff. W. F. Langworthy, K.C., for the defendants.