

from a hook attaching them to the cable and fell with him to the bottom. No evidence was called on the part of the defendants.

The jury found that the defendants were guilty of negligence causing the accident: (1) In allowing persons to use the hoist as a means of going up or down the shaft, and by using an unsafe and improper hook; and (2) by the tagman not signalling the engineer to stop hoisting until the cable ceased moving; and they assessed the damages at \$4,000, all to go to the mother.

The Divisional Court affirmed the judgment.

The defendants appealed upon two grounds: one, that the defendants, in the circumstances, owed no duty to the deceased, who was not one of their workmen; the other, that the damages were excessive.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, J.J.A.

J. H. Rodd, for the defendants.

J. Sale, for the plaintiff.

GARROW, J.A.:—We are all of opinion that, upon the latter ground, there must be a new trial. Damages under R.S.O. 1897 ch. 166 are confined, as has been many times pointed out, to the pecuniary loss sustained by the surviving relatives. No one knows how long a present condition, based upon such casual and uncertain things as continued life, health, and earning capacity, may continue. The son, if he had lived, must still have endured the ordinary risks of compulsory idleness from accident or ill-health, or even from ill-luck in finding employment, or employment which would not have permitted him to reside with his parents. And, as he had reached the marriageable age (26), he might very naturally have married, in which case his bounty to his parents must have ceased or been greatly reduced.

And, upon the other hand, the mother, to whom the jury awarded the whole of the damages, is of the age of 65 years, and in the nature of things cannot require such a provision as if she had been, for instance, the widow of the son.

The amount awarded, \$4,000, would, if invested at five per cent., give her an annuity of \$200 per annum for life and leave the principal untouched, which seems to be a result quite beyond anything which the evidence or the circumstances would justify, or which could have been properly arrived at