

bar was of unusual length. Bars of the ordinary length were being constantly run down in the same direction, but none had been known before to reach the point where plaintiff was struck. He was not ordered to move to where he did, but he said that he stepped there to get out of the way, because there was no room to go any other way, on account of a number of iron bars which were lying on the floor.

A nonsuit was ordered by BOYD, C., at the trial.

Plaintiff moved to set aside the nonsuit and for a new trial.

The motion was heard by FALCONBRIDGE, C.J., STREET, J., BRITTON, J.

J. W. Nesbitt, K.C., for plaintiff.

E. E. A. DuVernet and B. H. Ardagh, for defendants.

STREET, J.—. . . There was evidence here which should have been submitted to the jury.

The red hot steel bars, after being put through the rollers, were run out from them upon the straightening bed. There is evidence that plaintiff, stepping away from the punching machine . . . was obliged to step back towards the straightening bed, because all other places were blocked by iron bars lying on the floor. The straightening bed, he says, was only some four to six feet away from where he was working, and was unguarded, and he stepped back upon it just at the moment that a hot bar of iron was run down it so far that it struck him, and he was injured.

It appears to me that there was evidence here to go to the jury that the straightening bed was a dangerous place which should have been guarded, under the Factories Act, and also that there was evidence of a defect in the condition of the ways, works, plant, buildings, or premises of defendants, under the Workmen's Compensation Act, which should have been submitted to the jury. The arrangement of the premises by which bars of hot iron were run down the straightening bed, unguarded, and in close proximity to men working at other machines, would be evidence of a defect in the ways and premises of defendants, in my opinion.

New trial ordered. Costs of former trial and of this motion to be paid by defendants.

BRITTON, J., gave reasons in writing for the same conclusion.

FALCONBRIDGE, C.J., concurred.