

The appeal to the Supreme Court of Ontario (First Appellate Division) was heard by HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE and HON. MR. JUSTICE HODGINS.

Arthur Cohen, for the appellant.

L. E. Awrey, for the defendant, the respondent.

THEIR LORDSHIPS (V.V.) dismissed the appeal with costs.

SUPREME COURT OF ONTARIO.

FIRST APPELLATE DIVISION.

JANUARY 17TH, 1914.

KOSTENKO v. O'BRIEN.

6 O. W. N. 99.

Negligence—Master and Servant—Employee Injured by Felled Tree Falling on Him—Workmen's Compensation for Injuries Act—Lack of Notice—Defective System—Common Law Liability—Damages.

SUTHERLAND, J., 25 O. W. R. 663; 5 O. W. N. 689, *held*, that for a contractor to fell trees which might fall into the path of employees engaged in the carriage of logs, without proper superintendence of such operations, was a defective system for which defendants were liable at common law.

Kreuzsynicki v. Can. Pac. Rwy. Co., 25 O. W. R. 262, and *Fairweather v. Owen Sound Stone Quarry Co.*, 26 O. R. 604, distinguished.

SUP. CT. ONT. (1st App. Div.) vacated above judgment, and ordered that the case should be opened up and trial continued before SUTHERLAND, J. Appellants to pay costs of appeal forthwith after taxation, also to pay additional costs, if any, occasioned to respondents if trial is continued at Toronto.

Appeal by the defendants from judgment of HON. MR. JUSTICE SUTHERLAND, 25 O. W. R. 663.

The appeal to the Supreme Court of Ontario (First Appellate Division) was heard by HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE and HON. MR. JUSTICE HODGINS.

G. H. Watson, K.C., for the appellants.

A. G. Slaght, for the plaintiff, the respondents.

THEIR LORDSHIPS vacated the above judgment of Hon. Mr. Justice Sutherland, which was in favour of plaintiff for the recovery of \$900 and costs, and ordered that the case should be opened up and the trial continued before Hon.