

## REPORTS AND NOTES OF CASES

### Dominion of Canada.

#### SUPREME COURT.

ONT.] CANADIAN COLOURED COTTON MILLS CO. v. KERVIN. [May 30.  
*Negligence—Dangerous Machinery—Statutory duty—Cause of accident.*

K., a workman in a cotton mill, was killed by being caught in a revolving shaft and dashed against a beam. No one saw the accident and it could not be ascertained how it occurred. In an action by his widow and infant children against the company the negligence charged was want of a fence or guard around the machinery which caused the death of K. contrary to the provisions of the Workmen's Compensation Act.

*Held*, reversing the judgment of the Court of Appeal (25 A.R. 36) and of the Divisional Court (28 O.R. 73), Gwynne, J., dissenting, that whether the omission of such statutable duty could or could not form the basis of an action at common law, the plaintiffs could not recover in the absence of evidence that the negligence charged was the cause of the accident.

*Oster*, Q.C., and *Pringle*, for appellants. *Aylesworth*, Q.C., and *Chen*, for respondent.

B.C.] HOBBS v. ESQUIMALT & NANAIMO RY. CO [May 30.  
*Agreement for sale of land—Mutual mistake—Reservation of minerals—Specific performance.*

The E. & N. Ry. Co. executed an agreement to sell certain lands to H., who entered into possession, made improvements, and paid the purchase money, whereupon a deed was delivered to him which he refused to accept, as it reserved the minerals on the land though the agreement was for an unconditional sale. In an action by H. for specific performance of the agreement the Co. contended that in its conveyances the word "land" was always used as meaning land minus the minerals.

*Held*, reversing the judgment of the Supreme Court of British Columbia (6 B.C.Rep. 228), TASCHEREAU, J., dissenting, that the contract for sale being expressed in unambiguous language, and H. having had no notice of any reservations, it could not be rescinded on the ground of mistake and he was entitled to a decree for specific performance.

*Riddell*, for appellant. *Hogg*, Q.C., and *Marsh*, Q.C., for respondents.