

brother, Barry S. Cooper; and he coupled with the gift—for some purpose, it must be assumed—the name, not of his other surviving brother, who had no children, but of his brother Barry S. Cooper; a conjunction absolutely meaningless unless the word “children” is to be supplied, as the appellants contend.

I would allow the appeal and declare accordingly. Costs of all parties out of the estate.

HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE and HON. MR. JUSTICE HODGINS agreed.

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SUPREME COURT OF ONTARIO.

FIRST APPELLATE DIVISION.

OCTOBER 22ND, 1913.

KETTLE v. DEMPSTER.

5 O. W. N. 149.

*Negligence—Injury to Person Working on Highway—Negligence of Driver of Vehicle Owned by Defendant—Evidence—Finding of Trial Judge—Appeal.*

SUP. CT. ONT. (1st App. Div.) *held*, that the evidence justified the finding of the trial Judge in favour of the plaintiff in an action for damages for the negligence of defendant's servant in causing a steel girder to fall upon the plaintiff.

Appeal by the defendant from a judgment of HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B., in favour of the plaintiff pronounced at the trial, without a jury.

The action was brought to recover damages said to have been caused to the plaintiff by the negligence of the defendant's servant under the following circumstances:

The plaintiff was employed in assisting to place a heavy steel girder in a house on Dufferin street, in the city of Toronto. To enable this to be done, the girder was set up on edge (it was 28 feet long and 21 to 24 inches by 6 inches) and was being moved from the street into the house upon iron rollers. The operation necessarily caused a temporary block of the highway. Just at that time the defendant's servant, one Thomas Byrne, driving what is called a bread wagon having a covered top, came along and proposed to