

The power house was not a factory as defined by the Factories Act, and no liability under that act attaches to the defendants. But the defendants are I think, liable at common law as well as under the Workmen's Compensation for Injuries Act. It was their duty to take reasonable care that the safety of their servants should not be imperilled as it undoubtedly was imperilled by a thing so dangerous as the sharp points on the rotating shaft. The end of the shaft might have been cut off or securely guarded. But the defendants failed to adopt any of the obviously practicable precautions which would have protected their workmen from danger in the narrow passage.

I therefore find there was in use by the defendants a defective and negligent system which caused the death of Hicks.

There was no contributory negligence. The space in which Hicks had to move between the fly-wheel and the end of the shaft was but fifteen or sixteen inches. A slight movement backward even if it amounted to a step, as Henderson calls it, is not negligence in the circumstances of this case. It is, I think, unreasonable to expect that Hicks recovering as he was from the strain and restricted circulation resulting from heavy labour in a cramped position should have in mind the dangerous shaft end.

The plaintiffs being entitled to recover at common law, I fix the compensation to which they are thus entitled at \$4,000. They would not be entitled to so much under the Workmen's Compensation for Injuries Act, which, in my opinion, also undoubtedly applies.

Hicks' death was caused by a defect in the condition of the machinery and premises used in the business of his employers. Henderson was negligent in having the fly-wheel moved through the passage while the shaft was in motion, and in ordering Hicks who was bound to conform to his orders to assist in moving the wheel and was so conforming when injured.

Hicks' earnings were from \$55 to \$60 a month. Others in the same grade in a like employment were earning about the same wages. Upon the basis prescribed by the Act mentioned the plaintiffs would be entitled to but \$2,000 as compensation. I think, however, they are entitled to the larger amount stated, and I accordingly direct that judgment be entered in favour of the plaintiffs for \$4,000 and costs—the compensation to be apportioned two-thirds to the widow and one-third to the child. Stay of thirty days.