

Reasons for judgment were afterwards given by

OSLER, J. A.:—The plaintiff, when injured, was at the place provided for the men to sleep and cook their food. The questions upon which the appeal was taken were whether the effect of a contract between defendants and Chambers and Bell was to make the latter sub-contractors for the former, and whether the liability of defendants to the plaintiff was thereby excluded. There is not much room for doubt that the contract in question was in terms a sub-contract for the performance of that for which defendants had contracted, and that, therefore, if at the time of the accident the work was really being carried on under this contract, the defendants would be liable, if at all, only under the provisions of sec. 4 of the Workmen's Compensation for Injuries Act. The evidence would not warrant a recovery under that section, although the sleeping place at which plaintiff was hurt was provided by the defendants, if the defendants were not themselves carrying on the work, since the sleeping place might, as circumstances required it, have been moved according to the best judgment of those actually engaged in control. The more serious question was as to who was in fact carrying on the work, and as to the evidence tending to shew that, whatever was the effect of the sub-contract, the defendants were themselves in actual control. The defendants were entitled to a clear and distinct ruling of the trial Judge as to whether the document they relied upon was, as they contended, a sub-contract. This they did not obtain, and if the document had been construed as would have been proper, namely, as a sub-contract, the distinct issue might then have been presented to the jury, whether it had been abandoned, and whether the work was in fact being done by defendants or by Chambers and Bell independently. The trial was not satisfactory in this regard, and the persons who could have cleared up much of the confusion were not called.

New trial ordered, before which plaintiff may determine on what clause of the Workmen's Compensation for Injuries Act he will rest his case.

---

DECEMBER 9TH, 1902.

C. A.

DODGE v. SMITH.

*Appeal—Leave to Adduce Further Evidence.*

Motion by plaintiffs for leave to adduce further evidence on their appeal to the Court of Appeal from the decision of a