

sufficiently locked, and that it allowed the belt to travel on to the fixed pulley, thereby putting the whole of the counter-shaft in motion at high speed; that the engine should have been slowed down during the operation; and that Werlich was negligent in leaving the cover off the counter-shaft while the shafting was in motion and putting the belt on the wrong side of the drive-wheel. Contributory negligence is negatived.

Accepting the theory propounded by the defendants, all these grounds of negligence are relevant, and are justified by the evidence. On the other hand, if the theory propounded by the plaintiff and accepted by the jury is correct, the only negligence which is applicable is that relating to leaving the cover off the machine by Werlich until he had ascertained that the machine was going to operate properly. Even in that view of the case, I think I should accept the findings of the jury, leaving it to an appellate Court to interfere.

The defendants' counsel pressed strenuously for a nonsuit, upon the ground that the only fair inference from the evidence was, that the accident was occasioned by Falconer's own conduct in endeavouring to hold the belt in place upon the free pulley while it was being replaced by Werlich upon the moving pulley below.

Accepting the principle laid down in *Sims v. Grand Trunk R.W. Co.*, 10 O.L.R. 330, and in *Jones v. Toronto and York Radial R.W. Co.*, 21 O.L.R. 421, this case cannot be said to fall within any of the exceptions to the general rule that the question of contributory negligence is one for the jury.

For the benefit of any Court dealing with the matter, I may say that the impression made upon my mind as to what really happened was this. Falconer probably took the stick produced, and held the belt upon the free pulley. As Werlich had passed the belt down on the wrong side of the moving pulley below, as soon as he placed it upon the moving pulley it would immediately pass over on to the fixed pulley above. The effect of this was to cause the wooden pulley to rotate instead of remaining stationary. This wooden pulley then struck the stick, jerked it out of Falconer's hands, threw it violently upon the box, and it then rebounded and struck Falconer. Falconer would be standing in such a position that the stick, when jerked from his hands, would be thrown away, and would only reach him upon a rebound; and the break in the walls of the cover indicated that there had been such a rebound.

I allow an amendment by permitting the plaintiff to set up the negligent placing of the belt on the wrong side of the