

LATCHFORD, J.:—This is an action brought by the next friend of the plaintiff, an infant, against the defendants, an incorporated company, carrying on business as woollen manufacturers in their factory at Glen William, in the county of Halton. Damages are claimed at common law, and under the Workmen's Compensation for Injuries Act and the Ontario Factories Act, for injuries sustained by the plaintiff on the 15th of December, 1911, when he was in the defendants' employ.

In opening the case to the jury, counsel for the plaintiff mentioned that the defendants' liability was covered by insurance; and I thereupon—following *Loughead v. Collingwood Ship Building Company*, 16 Q.L.R. 64—required him to elect between a postponement of the trial or the dismissal of the jury. He chose the latter. I then dismissed the jury and proceeded with the trial.

The plaintiff, who was nineteen years of age at the time of the accident, had had five years' experience in England in the same kind of work that he was doing for the defendants in their spinning room on the third story of their factory.

An elevator ran between the weaving room on the ground floor of the factory and the room in which the plaintiff was employed. Until a few weeks before the accident the elevator was operated by a belt which ran from the main shaft, suspended from the ceiling of the centre of the weaving room, to a pulley connected with the elevator. Some inconvenience resulted from this, and a jack shaft was installed between the main shaft and the pulley which actuated the elevator. The main shaft was connected to this sub-shaft by a belt. From the sub-shaft to the elevator pulley was a five-inch belt, with a twist in it, so as to give the elevator pulley a reverse motion. The pulley actuating the belt to the elevator pulley was a fixed pulley; and the belt, either because of the twist or—mainly as I find—because the shaft was not properly hung, frequently came off.

The employees with few exceptions were women and children. The evidence of one of the women in the weaving room is that this belt often came off, and that then "anybody put it on again." When the belt was off, the elevator would not run, and the skips containing the yarn from the spinning room could not be brought down to the weaving floor, nor could the skips containing the emptied spools or carded wool be taken up from the ground floor or the second story to the third.

Small boys were employed, one of them under fourteen, to take the spools, rolls and yarn from one story to another by means of the elevator.