

DIVISIONAL COURT.

JANUARY 2ND, 1913.

PORTLANCE v. MILNE.

4 O. W. N. 589.

Negligence—Master and Servant—Personal Injury—Workmen's Compensation for Injuries Act—Findings of Jury—Defective System—Stop Log and Chain—Contributory Negligence.

DIVISIONAL COURT affirmed judgment of Dist. Ct. Judge Sudbury awarding plaintiff damages for personal injuries sustained while in defendant's employ where the jury had found defendant's system to be faulty and where they had expressly found that plaintiff was guilty of no contributory negligence.

Appeal by defendants from judgment of the Judge of Dist. Ct., Sudbury, in favour of plaintiff upon the answers of a jury.

The appeal to Divisional Court was heard by HON. SIR WM. MULOCK, HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE MIDDLETON.

R. McKay, K.C., for the defendants, appellants.

A. G. Browning, contra.

SIR WM. MULOCK, C.J.Ex.D.:—The plaintiff, a servant of the defendants, was injured in their saw-mill, when on duty there and brings this action under the Workmen's Compensation for Injuries Act.

The evidence shews that it was the plaintiff's duty to assist in the operations connected with the drawing of logs from the water by an endless chain into the mill, and until they reached the saw carriage. A stop board was suspended a short distance from the head of the inclined plane, up which the logs were being drawn. When the log in question was being drawn by the chain up this inclined plane, the plaintiff endeavoured to cant it off towards the "kicker," but failed to do so, and it passed under the bounce board, where it got wedged in. The plaintiff then pulled a rope thereby stopping the chain, and then tried to free the end of the log from the bounce board. Whilst thus engaged, the free end of the log slipped down and came in contact with the saw carriage,