

to shew that a rule, the application of which he wishes to get rid of, has been waived or abandoned by a course of conduct inconsistent with its existence, known to and tacitly or expressly assented to by the employer, and the onus has not been satisfied in this case. The cage was not constructed nor intended for the use of the workmen, but a safe, convenient, and usual way was provided for them by means of ladders. The injury which the unfortunate deceased met with arose from his deliberate disobedience of the rule, and it ought to have been held that on this ground the plaintiff had no right of action. Appeal allowed with costs and action dismissed with costs.

Boyce & Draper, Rat Portage, solicitors for plaintiff.

Moran & McKenzie, Rat Portage, solicitors for defendants.

---

APRIL 12TH, 1902.

C. A.

PEAREN v. MERCHANTS BANK OF CANADA.

*Malicious Prosecution — Reasonable and Probable Cause — Bank — Customer—Warehouse Receipts — Charge of False Statements made therein as to Grain—Nonsuit on Undisputed Facts.*

Appeal by defendants from order of a Divisional Court setting aside judgment of nonsuit of FALCONBRIDGE, C.J., and directing a new trial of action for damages for malicious prosecution. The plaintiff was a member of the firm of Pearen Bros., millers, etc., Brampton, and had had an account with defendants for about 10 years before the proceedings complained of. Three charges were made against plaintiff by defendants. The first was that he had alienated between August 23rd, 1899, and March 2nd, 1900, certain wheat covered by warehouse receipts issued by him in favour of defendants. The police magistrate dismissed this charge, but committed plaintiff for trial on the second charge, viz., of withholding possession of the wheat from defendants, and the County Judge subsequently tried and acquitted him. The third charge was that plaintiff, between 2nd August, 1899, and 12th February, 1900, did issue warehouse receipts to defendants and wilfully make false statements therein, contrary to sec. 578 of the Criminal Code, and sec. 76 of the Bank Act. The magistrate dismissed this charge. The plaintiff then brought this action. The trial Judge held that absence of reasonable and probable cause was not shewn in respect of the first charge; and as to other charges the plaintiff, not having obtained the fiat of the Attorney-