Moss, J.A.

JANUARY 13TH, 1902.

COURT OF APPEAL—CHAMBERS.

ROTHSCHILD v. SILVERMAN.

Appeal—Leave to Appeal to Court of Appeal—Finding of Trial Judge.

Motion by plaintiff for leave to appeal from order of a Divisional Court (*Globe*, 8th January, 1902), affirming judgment of STREET, J.

C. Millar, for plaintiff.

J. H. Clary, Sudbury, for defendant.

Moss, J.A.—There is no dispute as to the law; it is solely a question of fact. The trial Judge found against the plaintiff's testimony, and his conclusion should not be disturbed, and it involves a finding that the release of the judgment, to set aside which this action is brought, was a fair transaction. The Divisional Court agreed with the trial Judge, and under the circumstances a further appeal ought not to be sanctioned. Motion refused with costs.

Clary & Parker, Sudbury, solicitors for plaintiff.

McVeity & Culbert, Ottawa, solicitors for defendant.

FALCONBRIDGE, C.J.

JANUARY 13TH, 1902.

TRIAL.

ADAMS v. CULLIGAN; HOWE v. CULLIGAN.

Master and Servant—Negligence of Master—Mine—Defective Machinery—Improper Means of Ascent and Descent—By Ladders—By Common Ore Bucket—Contributory Negligence of Workman—Fatal Accident Act—Death of Widow of Deceased after Action Brought.

McHugh v. G. T. R. Co., 32 O. R. 234, 21 C. L. T. Occ. N. 581, followed.

Actions at common law and under Workmen's Compensation Act, against the defendants Culligan and Gilchrist, who are the owners of a mine in the Rainy River District, for damages for causing by their negligence the death of one Adams, the son of the plaintiff Adams, and one Howe, the brother-in-law of the present plaintiff Howe. The Howe action, as originally brought, was in the name of Aurora Matilda Howe, the widow of the deceased miner, and the only person entitled under R. S. O. c. 166, s. 3. Pending the trial the plaintiff, A. M. Howe, died, and the action was revived in the name of her brother-in-law, who is the administrator of her estate. By order of Court the actions were consolidated, but it was provided that the damages should