

DECEMBER 7TH, 1914.

*KOLARI v. MOND NICKEL CO.

Master and Servant—Injury to Servant—Miner Working at Bottom of Shaft — Falling of Bucket and Cross-head — Breaking of Cable—Evidence—Res Ipsa Loquitur—Application of Rule—Onus—Negligence—Defects—Want of Inspection—Damages.

Appeal by the plaintiff from the judgment of the Judge of the District Court of the District of Sudbury dismissing the action, after trial without a jury.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

J. S. McKessock, for the applicant.

J. M. Clark, K.C., for the defendant company, respondent.

The judgment of the Court was delivered by MEREDITH, C.J. O.:—The action is brought to recover damages for personal injuries sustained by the appellant while employed by the respondent as a labourer in one of its mines.

The appellant, when he met with his injuries, was working as a "mucker" at the bottom of a shaft several hundred feet deep in a mine of the respondent, and his duties were to "muck" and to give the signal for raising the laden buckets, which were moved by electrical power operated upon the surface. The shaft was divided into four compartments, two for the buckets, one for a cage, and the fourth for a ladder-way. The compartment in which the appellant was working was not timbered to the bottom of the shaft. The bucket was lifted by means of a steel cable; and there was a cross-head, weighing according to the testimony of the appellant about a ton, but according to the testimony of the witness Stovel about 400 lbs.; and there was a clip attached to the cable, the purpose of which was to keep the cross-head, as was stated on the argument, ten feet away from the bucket; and there were, at the distance of 100 feet from the bottom of the shaft, stop-blocks intended to prevent the cross-head from descending below that point. While the bucket, which had been filled, was being raised to the surface, the cable broke "right at the bucket," and the bucket and the cross-head

*To be reported in the Ontario Law Reports.