

Falconer went to the basement, procured the belt, and took it to Werlich, the millwright having general charge of the machinery in the mill, for the purpose of having the belt repaired and replaced. Werlich went to the machine and took the cover off the box or casing which enclosed the counter-shaft; the belt could not be replaced without his so doing. He then passed the belt over the counter-shaft and down through the openings, and went to the basement to lace it. Falconer assisted him in uncovering the counter-shaft and in passing the belt through.

When the belt was laced, Werlich came upstairs again, placed the belt upon the loose pulley, and went below again in order to put the belt upon the revolving pulley on the main shaft. Werlich states that at this time he told Falconer to stand clear, as it was his intention to start the belt. The jury have found—and I agree in their finding—that no such statement was made. When Werlich reached the basement, he immediately placed the belt upon the pulley; and there was no eye-witness of what next happened. By some means, something was violently thrown, and struck Falconer upon the breast, breaking three ribs and driving them into his heart, instantly killing him.

The theory put forward by the defendants was, that Falconer had taken a piece of wood—produced at the trial—with the view of holding the belt upon the free pulley while it was being placed on the moving pulley below, and that, when the belt commenced to move, this piece of wood was jerked from his hand and thrown against him with violence.

The piece of wood produced was found immediately after the accident, broken as if it had received some severe impact; and the sides of the box were broken where they had been hit by some such object as the stick produced.

The jury deliberately reject this theory of the accident, and adopt, instead of it, a theory propounded by the plaintiff's counsel and not founded upon any evidence. It was shewn that a band-saw was operated at no great distance from the counter-shaft. What is suggested is, that the man operating the band-saw may have thrown a piece of waste wood over on to the moving belts, and that this may have been thrown in such a way as to bring about the injury.

If this finding were essential to the plaintiff's recovering, I should be much inclined to nonsuit; but I think that the defendants cannot complain if the theory propounded by them is accepted; and upon that there is liability.

The negligence found by the jury is, that the shifter was in-