

SECOND DIVISIONAL COURT.

MAY 4TH, 1920.

McDONALD v. DAVIS SMITH MALONE CO. LIMITED.

BLYTH v. DAVIS SMITH MALONE CO. LIMITED.

*Negligence—Men Hired by Ice-harvesters to Haul Ice with Horses and Sleighs from Lake to Point of Shipment—Loss of Horses by Falling through Ice—Channels in Ice Cut by Direction of Foreman—Men Hired, whether Servants or Independent Contractors—Findings of Jury—Employment of Competent Foreman—Common Employment—Negligence of Fellow-servant.*

Appeals by the respective plaintiffs from the judgment of the Judge of the County Court of the County of Grey, dismissing the actions, which were brought to recover damages for losses sustained by the plaintiffs respectively, by reason, as they alleged, of the negligence of the defendants.

The appeals were heard by MULOCK, C.J. Ex., RIDDELL, SUTHERLAND, and MASTEN, JJ.

G. W. Mason, for the appellants.

H. J. Scott, K.C., for the defendants, respondents.

MULOCK, C.J. Ex., in a written judgment, said that the defendants were engaged in causing ice in Shallow Lake to be cut and hauled to a near-by railway station, and for that purpose hired neighbouring farmers, each with a team, to do the hauling. The plaintiff McDonald was one of the men so hired. The plaintiff Blyth was also hired and supplied a team, which was driven by his son. Both teams, while engaged in the work, broke through the ice and were drowned, and the actions were brought to recover damages for the loss of the teams.

The defendants employed one Macpherson as their foreman in charge of the operations, and for the purpose of carrying on the work Macpherson had caused two channels in the ice to be cut, whereby the blocks of ice could be floated to the loading points. These channels, running northerly, converged, and at the time of the accident their northerly ends were within 103 feet of each other. The loading was being done at a point near the northerly end of the westerly channel, called No. 2. Each sleigh, when loading, was close to the channel's end, and when loaded was driven off, another taking its place.

While McDonald's sleigh was being loaded, Blyth's team was standing near, within 20 to 40 feet, ready to move to the loading place. When McDonald's sleigh was loaded, he started for the