

Plaintiff, the widow of one Joseph Graham, sued on behalf of herself and her children, under the Fatal Injuries Act, to recover damages for his death, which was caused, as alleged, by the negligence of defendants.

Defendants carried on business as manufacturers of agricultural implements. The deceased was a workman in their employment, and on 19th August, 1903, was engaged with two other men in working at a drop-hammer in the machine shop. The end of a steel bar, placed upon the anvil, to be struck by the hammer, flew up and struck deceased a severe blow in the abdomen, in consequence of which he died.

The jury found: (1) that the system in use by defendants for doing this work was defective in that "it" lacked support for the end of the piece of steel; (2) that "it" arose or had not been discovered owing to defendants' negligence or that of some one intrusted by them with the duty of seeing that the condition or arrangement of the works was proper; (3) that the injury was caused by the lack of support to the bar; (4) that Robinson (the blacksmith) was a person whose orders deceased was bound to obey; (5) that deceased said to Robinson "go ahead;" (6) that there was no evidence that Robinson gave any order; (7) that Robinson should have seen that the steel was flat on the anvil; and (8) that the deceased was not negligent.

The appeal was heard by OSLER, MACLENNAN, GARROW, MACLAREN, J.J.A.

A. B. Aylesworth, K.C., for defendants.

G. Lynch-Staunton, K.C., for plaintiff.

OSLER, J.A., gave reasons in writing, in which GARROW, J.A., concurred, for holding that defendants were not liable at common law or under the Workmen's Compensation Act, and therefore that the appeal should be allowed and the action dismissed.

MACLENNAN, J.A., gave reasons in writing, in which MACLAREN, J.A., concurred, for holding that defendants were liable at common law upon the findings of the jury on account of the defective system, and therefore that the appeal should be dismissed.

THE COURT being thus divided, the appeal was dismissed with costs.