

impairing the usefulness of the machine. Witnesses for the defence swore that the machine was a modern one, and that the guard had been used on it as intended by the makers of it, and it was not shewn that any other machine of the kind had a better guard.

The Chancellor left the case to the jury without any written questions, instructing them that upon the evidence they might find either that the guard was or was not on at the time of the accident, and he also expressly left to them the question whether the guard was a sufficient one, if it was on at the time of the accident.

No objection was taken to the charge, and the jury found for the plaintiff and assessed the damages at \$422.80. They found specially that the guard was insufficient. Judgment was entered for plaintiff for the damages found.

Defendants moved to set aside the verdict and for judgment in their favour, upon the ground that there was no evidence to support the finding, or for a new trial, upon the ground that the verdict was against the evidence.

J. W. Nesbitt, K.C., for defendants.

J. G. Farmer, Hamilton, for plaintiff.

The judgment of the Court (FALCONBRIDGE, C.J., STREET, J., BRITTON, J.) was delivered by

STREET, J.—The issue as to whether the machine was properly guarded appears to be raised distinctly upon the pleadings, and to have been one of the matters upon which evidence was given on both sides at the trial. It was expressly submitted to the jury without objection, and I can see no reason . . . for holding that there should be a new trial because the jury may have based their verdict upon that ground.

The question of the contributory negligence of defendants was also left to the jury with proper instructions as to its effect. In the sealed verdict which they handed in, after stating that the guard was not a proper one, they say they “consider that the plaintiff is entitled” to recover the damages which they assess. This must be treated as a general verdict for plaintiff . . . and a finding in plaintiff’s favour upon the question of contributory negligence is involved in it. . . .

Appeal dismissed with costs.