

APRIL 12TH, 1902.

C. A.

## ANDERSON v. MIKADO GOLD MINING CO.

*Master and Servant — Violation of Rule by Servant — Master not Responsible for Injury Resulting therefrom—Onus on Servant to Shew Waiver of Rule by Master—Mine—Cage for Hoisting Tools—Ladders for Ascent and Descent of Workmen—Injury to Servant Using Cage.*

Appeal by defendants from judgment of ROBERTSON, J., in favour of plaintiffs, for \$2,250, in action by the widow and infant children of Oscar Anderson, deceased, for damages for injuries which caused his death. The deceased was engaged, with three others, to widen a drift at the bottom of 240 foot level of the defendants' mine, and was paid by the foot. The defendants owned and supplied the necessary tools, and agreed to transport them to and from the surface, where they had to be sharpened. Anderson was ascending, with three others, by the steam lift, when one of the tools, a steel 2 or 3 feet long, which was lying on the bottom of the cage, became projected a little beyond it, and coming in contact with one of the shaft timbers, struck Anderson and threw him between the cage and the timbers. Before the cage could be stopped he was so badly injured that he died in the hospital at Port Arthur 45 days afterwards. The trial Judge found the only way by which the tools were taken up to the surface was the cage, which had no guards and no devices for securing the steels while it was ascending with them, and that the men, as well as the other employees, and the manager, habitually went up and down by the lift, and disregarded, with the knowledge of the mine officers, the notice not to do so; that the ladders furnished by the defendants were defective, and did not comply with the Mines Act, sec. 69 (17); that deceased had not been warned not to use the lift, and had not said he would take all risks, and had not been guilty of contributory negligence; that the cage was unsafe; and that defendants had been guilty of negligence.

A. B. Aylesworth, K.C., and N. W. Rowell, for defendants.

R. C. Clute, K.C., and A. R. Clute, for plaintiffs.

THE COURT (ARMOUR, C.J.O., OSLER and MOSS, JJ.A.) held that the death of the deceased arose from his own act in going up by the cage in violation of the rule of the defendants, and they therefore could not be held responsible: *Senior v. Ward*, 1 E. & E. 385. The onus is on the servant