

3. Could the deceased William King, by the exercise of ordinary care, have avoided the accident? A. Not under the circumstances.

4. Was the accident caused by reason of any defect in the condition or arrangement of the ways, plant, or premises connected with, intended for, or used in the business of the defendants? A. Yes.

5. If so, what was the defect? A. A defective system in protecting hatches.

6. Was the injury which resulted in the death of said King caused by reason of the negligence of any person in the defendants' service who had any superintendence intrusted to him, whilst in the exercise of such superintendence? A. Yes.

7. If so, name such person and state what the negligence was. A. The foreman carpenter, by leaving No. 3 hatch unprotected.

8. Did the defendants adopt a negligent and dangerous system in regard to the hatchways when the boats were laid up, which caused the death of King? A. Yes.

9. If so, describe the negligent and dangerous system to which you refer. A. The system of leaving the hatches unprotected.

10. Was the deceased returning to the ship "Ionic" in the course of his duty and employment, when he received the injuries complained of? A. Yes.

11. At what sum do you assess the damages?

(1) Under the Workmen's Act? A. \$3,900.

(2) At common law? A. \$7,000.

The trial Judge directed judgment to be entered for the plaintiff for \$3,900 with costs.

The defendants by their appeal asked to have the action dismissed.

The plaintiff by her cross-appeal asked judgment for \$7,000.

The appeal and cross-appeal were heard by FALCONBRIDGE, C.J.K.B., BRITTON and RIDDELL, JJ.

R. J. Towers, for the defendants.

A. Weir, for the plaintiff.

RIDDELL, J.:— . . . On the 6th March, Anderson, the servant of the defendants, opened the port gangway on the "Huronie" to get out to do some repairs on the "Ionic." Between the port gangway thus opened and the starboard gangway there was a hatch closed, with the exception of two planks in the middle, which had been placed on edge, leaving an open-