

Meredith, C. J. C. P., MacMahon, J., Teetzel, J.]

[Jan. 4.

BILLING v. SEMMENS.

*Master and servant—Injury to servant—Death—Absence of direct evidence as to cause of injury—Case for jury—Dangerous machinery—Factories Act.*

The plaintiff sued as the personal representative of her deceased husband to recover damages for injuries sustained by him while working as a sawyer in the employment of the defendants, which, as she alleged, resulted in his death, and were caused by a defect in the condition or arrangement of a "jointer" at which the deceased was working, the revolving knives of which it was, as she contended, the duty of the defendants under the Factories Act to guard, and which were not so guarded. The plaintiff shewed that the knives of the jointer were a dangerous part of the defendant's machinery; that it was practicable securely to guard them; that they were not securely guarded; that the deceased's injuries were caused by his fingers coming in contact with the knives while they were in motion; and that he was then engaged in trimming, by means of the knives, the edges of a board eight feet long, two inches thick, and from twelve to fourteen inches wide; but it was not shewn by direct evidence exactly how the deceased's fingers came into contact with the knives. It was shewn, however, that almost immediately after the accident the board was found lying on the table of the machine, with "up the centre a split running about half way through it;" that the board "had been run half way over the machine;" and that there was a shaving hanging to it "as if the knives had struck the wood and never cleaned it out—curled up." There was also evidence that the action of the operator in pushing a board over the machine was likely to stop the machine if the bolts were not tight, and that, in the opinion of an expert who had seen the machine in operation, the position of matters immediately after the accident indicated that the machine had stopped owing to the belt not having been tight enough, and that, if this had happened, the board would be likely to "jump" and to cause the operator's fingers to drop from it and to be brought into contact with the knives. There was also evidence that what was spoken of in the evidence as a "fence" was in proper position.

*Held*, that these circumstances afforded evidence which, if believed, warranted the inference being drawn that the injuries to the deceased happened while he was in the act of putting the board through the jointer, and that, owing to the knives being unguarded, his fingers, without fault of his, came into contact with the revolving knives by which the ends of them were taken off.

*Montreal Rolling Mills Co. v. Corcoran*, 26 S.C.R. 595, *Canadian Coloured Cotton Co. v. Kervin*, 29 S.C.R. 479, and *Wakelin v. London and South Western R. Co.*, 12 App. Cas. 41, (1896) 1 Q.B. 196 n., distinguished.