

son (1904), 7 O. L. R. 376, 8 O. L. R. 682; *Story v. Stratford Mill Building Co.* (1913), 30 O. L. R. 271.

But it is claimed that the defendants are not liable at common law. This is the real dispute.

I think the case is concluded so far as this Court is concerned, by two cases in the Supreme Court of Canada.

In *Grant v. Acadia Coal Co.* (1902), 32 S. C. R. 427, it was held by the Supreme Court that, if a mining company failed to maintain their mine in a condition suitable for carrying on their work with reasonable safety, they could not evade liability by shewing that this condition was due to the neglect of the fellow-servant of a servant injured by such defective condition. It is true that there was a breach of a statutory regulation, but Sir Louis Davies points out (p. 434) that this was "nothing more than a statutory declaration of the common law duty of the mine owner;" and the case did not turn on the duty being statutory. "It is not enough," says Mills, J., "that the company shall have given people directions to its servants, but it is responsible for their performance" (pp. 440, 441).

In *Canada Woollen Mills v. Traplin* (1904), 35 S. C. R. 424, an elevator of the defendants had been allowed to become shaky, whereby a pin fell out and allowed the elevator to drop, injuring the plaintiff, a workman in the defendants' employ. A verdict for the plaintiff at common law was sustained by the Court of Appeal, and the case was taken to the Supreme Court. The appeal was dismissed. Mr. Justice Davies pointed out (p. 430) that this was a case of "breach of the employers' duty to his workmen to provide and maintain . . . proper . . . appliances for carrying on his operations with reasonable safety," and quotes Lord Herschell, in *Smith v. Baker*, [1891] A. C. at p. 382: "The contract between employer and employed involves, on the part of the former, the duty of taking reasonable care to provide proper appliances and to maintain them in a proper condition." The learned Judge adds (p. 431): "There is a broad distinction between the liability of the master for . . . the condition of his premises or machinery and that arising out of the negligence in the management or operation of that machinery by the servants to whom he has entrusted it." Page 433: "The employer cannot escape from liability to a third person for injuries caused by defective premises . . . on the ground that he has not personally