

British Columbia.]

WEBSTER v. FOLEY.

Master and servant—Defective system of using machinery—Injury to workman—Liability to master—Notice to master.

F. was employed in a sawmill at Vancouver, B.C., as a chainer, and worked on a rollway, which is the portion of the machinery of the mill along which the logs are brought to the saw carriage. One of his duties was to put a chain under the log and roll it on to the carriage, and while doing so on one occasion a log rolled down the rollway and against one belied him and crushed him against the carriage, causing severe injuries, for which he brought an action against W. and E., the owners of the mill.

On the trial it was shown that chock blocks were used to check the log in its course down the rollway, which had a slope of from five to seven inches in its length of twelve feet, and that the blocks were only sufficient to hold one log. The jury found that the accident was due to the slope of the rollway and defective chock blocks; that F. could not have avoided the injury by exercise of proper care and skill in discharging his duties; that he had complained of the chock blocks to the proper persons, who promised to make them good; that W. and E., the owners, were not aware of the defects, but that W., the manager and defective foreman, should have taken cognizance of the matter and did not appear to have exercised due care; and they assessed damages to F. at \$5,000. The trial judge reserved judgment, and a motion was afterwards made on behalf of F. for judgment and a cross-motion by defendants to set aside the findings, and for a nonsuit. Eventually judgment was entered against W. and E. for the damages assessed, which was sustained by the court *in banc*.

Held, affirming the decision of the Supreme Court of British Columbia, that the employers were no less responsible for the injuries occasioned to F. by the defective system of using their machinery than they would have been for a defect in the machinery itself.

Held, further, that there being no Employers' Liability Act in force in British Columbia when the injury happened, F. was not precluded from obtaining compensation by failure to give notice to his employers of the defect in the chock blocks.

Appeal dismissed with costs.

Cassidy for appellants.

Ewart, Q.C., for respondent.
