

GARROW and MACLAREN, J.J.A., also concurred.

MAGEE, J.A., dissented, on the ground that the defendants were estopped (reasons stated in writing).

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FEBRUARY 28TH, 1911.

McKEAND v. CANADIAN PACIFIC R.W. CO.

*Master and Servant—Injury to and Death of Servant—Negligence—Defect in Way—Absence of Direct Evidence as to Cause of Injury—Findings of Jury—Evidence—Inference—Causal Connection.*

Appeal by the defendants from the order of a Divisional Court, 1 O.W.N. 1059, affirming the judgment of MAGEE, J., at the trial, in favour of the plaintiff, upon the findings of a jury.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, J.J.A., and RIDDELL, J.

I. F. Hellmuth, K.C., and Angus MacMurchy, K.C., for the defendants.

W. M. Douglas, K.C., and G. F. Mahon, for the plaintiff.

MOSS, C.J.O.:—The plaintiff's son, while engaged in the employ of the defendants in wheeling a barrow containing mixed concrete from a platform where it was made up, along a narrow plank-walk or way, spoken of in the evidence as the "north runway," in the direction of an abutment of a bridge over a highway in course of construction by the defendants, fell in some way to the ground below and was killed. The runway in question ran in a north-westerly direction from the platform on which the concrete was mixed, to another runway situate on the east side of the abutment, and west of the platform from which the mixed concrete was being wheeled. From the south end of this latter runway, another runway, spoken of as the "south runway," extended in an easterly direction to the platform on which the concrete was mixed. The north runway was constructed by laying two planks, 10 inches wide and 3 inches thick, alongside each other, thus giving a way of 20 inches in width.