

be necessary to be made consequent on the final disposition of the claim of Simpson & Rowland.

There will be no costs of the appeal, unless on further directions the Court sees fit to direct them to be paid out of the fund. Such a disposition of them, in my opinion, would not be an unfair one.

ANGLIN, J.

FEBRUARY 7TH, 1905.

TRIAL.

HOPKINS v. BURCHARD.

Master and Servant—Injury to Servant—Death—Negligence—Defect in Ways—Contributory Negligence—Course of Employment—Sunday Work—Jury—Nonsuit.

Action to recover damages for death of plaintiff's husband, an engineer employed by defendants, who was killed on Sunday 17th July, 1904, while engaged, as plaintiff alleged, in repairing a steam pipe which ran along a wall above defendants' boiler room. The space above the boiler room had formerly been used as a drying kiln, but after a fire which occurred some months before the date of the accident, its use had been discontinued, and the flooring removed, only a few boards being left, which were partly charred through, and were afterwards whitewashed over. The deceased had been for 12 years in defendants' employment, and must have known these facts. Nobody saw the accident happen. The deceased was found lying on the floor of the boiler room, his position and surroundings making it apparent that he had fallen owing to one of the boards mentioned having given way under his weight. Plaintiff claimed to recover both at common law and under the Workmen's Compensation Act.

At the close of plaintiff's case, defendants moved for a nonsuit, and renewed the motion after all the evidence was in. Judgment was reserved upon the motion, and questions submitted to the jury, who failed to agree upon any finding except that there was no proof of negligence which should be attributed to defendants as personal negligence, contra-distinguished from evidence of an employee.

J. M. Godfrey and A. McNab, for plaintiff.

E. E. A. DuVernet, for defendants.

ANGLIN, J. . . . I am of opinion that there was no evidence to go to the jury of negligence either of defendants or of their employees. The situation of the defective board,