The plaintiff alleged negligence on the part of both defendants.

At the trial before BRITTON, J., and a jury, at Sault Ste. Marie, both defendants, at the close of the evidence, asked to have the case withdrawn from the jury. Upon these motions judgment was reserved, and questions were submitted to the jury, upon which they found: (1) that the paper company was guilty of negligence which caused the death of Dube; (2) that the negligence was "not furnishing proper equipment, clamps, and ballast in deck of crane;" (3) that the crane was a dangerous machine at the time when used and as used by the steel corporation; (4) that it was dangerous "in not being properly clamped to track or blocked under decking—deck of crane not being properly ballasted;" (5) that the steel corporation was guilty of negligence which caused the death of Dube; (6) that the negligence was "in not having a proper rigger to superintend the work that had to be done;" (7) that Dube could not, by the exercise of reasonable care, have avoided the accident. The jury assessed the damages at $3,000, to be apportioned by the learned Judge; if both companies were liable, each was to pay $1,500; if only one, that company to pay $3,000.

U. McFadden and E. V. McMillan, for the plaintiff.

J. E. Irving, for the defendant the Algoma Steel Corporation Limited.

P. T. Rowland, for the defendant the Lake Superior Paper Company Limited.

BRITTON, J., said that no question was submitted to the jury as to whose servant Dube was at the time of the accident; the facts were not in dispute; and, upon the undisputed evidence, it was a question of law.

It was manifest that the danger was in the using of the crane, as and in the circumstances in which it was used, and not by reason of anything wrong or dangerous in the crane as it stood; and, in the opinion of the learned Judge, there was no evidence of negligence on the part of the paper company which should have been submitted to the jury.

Action against the paper company dismissed, but without costs.

There was evidence against the steel corporation that could not properly have been withdrawn from the jury; and judgment should go against that defendant for $3,000, with costs proper to an action in which there is only one defendant.