

DOHERTY V. MACDONELL—DIVISIONAL COURT—JAN. 13.

Master and Servant — Injury to and Death of Servant — Negligence—Contributory Negligence—Factories Act—Damages.]
—Appeal by the defendants from the judgment of MULOCK, C.J. Ex.D., in favour of the plaintiff, upon the findings of a jury, for the recovery of \$1,500 damages. The action was brought by Joseph Doherty to recover damages for the death of his son Frank Doherty, a workman employed by the defendants, alleged to have been caused by the defective condition and arrangement of the ways, works, and machinery of the defendants, which had not been remedied owing to the negligence of the defendants or some of their servants, as alleged. The Court (FALCONBRIDGE, C.J.K.B., RIDDELL and LATCHFORD, JJ.) dismissed the appeal with costs, being of opinion that the commission of a wrong according to the law of this Province had been proved by the application of the Factories Act, dangerous machinery not having been, so far as practicable, securely guarded; that the onus as to contributory negligence was on the defendants, and there was evidence to support the verdict; and that the damages were not so grossly excessive as to impel the Court to grant a new trial or put the plaintiff to the alternative of a reduction. Glynn Osler, for the defendants. T. F. Battle, for the plaintiff.