

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

E. E. A. DuVernet and J. C. Haight, Waterloo, for defendants.

W. M. Reade, Waterloo, for plaintiff.

Moss, C.J.O.:—On the argument of the appeal defendants alleged that, acting on the intimation of the trial Judge given at the trial, that, if possible, he would, before disposing of the case, make a personal examination of the machinery which caused the injury, they abstained from giving evidence as to the condition of the machinery before and at the time of the accident. We thought it proper to afford them an opportunity of producing such evidence, and we directed that defendants be at liberty to adduce it before the Judge of the County Court of Waterloo. The evidence was not taken, and defendants now intimate that, owing to changes in the buildings and machinery which they have made since the trial, they are unable to produce any useful evidence, and that the case will have to stand for decision as it was when argued.

It remains, therefore, to dispose of the case upon the present record.

By a somewhat singular combination of circumstances, plaintiff was thrown backwards into the gearing of a machine and roller for the bending of boiler plates. There is no doubt that he was lawfully working in the place where he was, near by the unprotected side of the machine into which he fell. At the moment of his fall the gearing was not in motion, but in his efforts to extricate himself he set the gearing in motion to an extent sufficient to inflict the injury of which he complains.

The trial Judge came to the conclusion that the machine was a dangerous one, and should have been guarded on the side where the accident happened, as in fact it was guarded on the other side, and that it could easily have been guarded at a small cost.

Upon the evidence as it stands there is no good ground for interfering with the findings of the trial Judge, affirmed as they have been by the Divisional Court.

Nor is there any sufficient reason for thinking that the absence of the guard was not the proximate cause of the