

The appeal to the Supreme Court of Ontario (First Appellate Division) was heard by HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE, and HON. MR. JUSTICE HODGINS.

H. H. Dewart, K.C., and B. H. Ardagh, for defendants (appellants).

John Jennings, for plaintiff (respondent).

HON. MR. JUSTICE MACLAREN:—The defendants claim that the accident was caused by the negligence of the deceased in interfering with the belt upon the shaft in question in disobedience of the orders of the millwright.

The belt in question conveyed power from the main shaft in the basement of the factory through a small opening in the floor to a counter-shaft about two feet above the ground floor which drove the shaper at which the deceased was working. This counter-shaft and the pulleys upon it were protected by a box covering which could be removed when necessary. The belt had loosened and been unlaced, and the deceased appears to have removed the box, taken up the belt and carried it to the room occupied by the millwright whose duty it was to repair it. After being repaired, the latter took it to its proper place, and put one end over a loose pulley upon the countershaft and through an instrument called a "shifter," and had the deceased drop one end through the hole in the floor while he went down and put the belt around the main shaft and up through the hole and then came up and laced it up. He went down to the basement to put the belt upon the proper pulley, a large one, 36 to 40 inches in diameter, upon the main shaft. He says that as he was leaving "I told Falconer (the deceased) to keep away, that I am going down to throw the belt on." He went down, and by means of a stick threw the belt on this large pulley, which was making three hundred revolutions a minute. This should merely have set the belt and the loose nine-inch pulley on the counter-shaft in motion without affecting the counter-shaft itself. Instead of this, the jerk down below threw the belt from the loose pulley over on the fixed pulley alongside of it, which was slightly larger, and was bevelled to facilitate the transference when it was desired to set the counter-shaft and the shaper in motion. The millwright came upstairs at once and found the deceased lying on the floor not far from the rapidly revolving counter-