

without himself coming before the Court and assuming responsibility for costs. But where the right of action is vested in the plaintiff, because the defendant's contract was made with him, the action cannot be stayed merely because it is shewn that he is in truth an agent for a principal, either disclosed or undisclosed.

Mr. Grayson Smith states his intention to counterclaim for specific performance. If he does so, he can, if he chooses, select his own defendants; and, all parties then being before the Court, he can be protected from any injustice in the matter of costs when the facts are developed at the hearing.

The appeal will be dismissed with costs to the plaintiff in any event.

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FALCONBRIDGE, C.J.K.B.

JANUARY 20TH, 1914.

LIVERMORE v. GERRY.

*Master and Servant—Injury to Servant—Dangerous Machinery—Want of Guard—Negligence—Contributory Negligence—Findings of Jury—Division of Liability—Damages.*

Action by a workman in a factory to recover from his employers damages for injuries sustained by him while at work in the factory, caused by a circular saw.

The action was tried with a jury at London.

N. P. Graydon, for the plaintiff.

G. S. Gibbons, for the defendants.

FALCONBRIDGE, C.J.K.B.:—The jury answered questions as follows:—

1. Were the injuries which the plaintiff sustained caused by any negligence of the defendants? Yes.

2. If so, wherein did such negligence consist? In not having the machine properly guarded.

3. Was the machine a dangerous machine so that it ought to have been, as far as practicable, securely guarded? Yes.

4. If you answer "Yes" to the last question, was it, as far as practicable, securely guarded? No.

5. Was the plaintiff guilty of negligence which caused the accident or so contributed to it that but for his negligence the accident would not have happened? Yes.