

## DIVISIONAL COURT.

JUNE 20TH, 1912.

## MERCANTILE TRUST CO. v. CANADA STEEL CO.

3 O. W. N. 1467.

*Negligence—Master and Servant—Dangerous Work—Warning—Lack of Proper Appliances—Prohibited Acts—Inadvertence—Contributory Negligence—Not Expressly Found by Jury.*

Action by administrators of one Peduzzi, a labourer formerly in employ of defendants, for damages for his death, alleged to have been caused by defendants' negligence. Peduzzi was killed by being struck by a brick falling down a shaft to which his duty was to bring material to be hoisted to bricklayers above. The jury found that deceased had unnecessarily projected his head below the shaft in spite of explicit warning as to the danger involved, and that if he had been in his proper place, he would not have been killed, but could not agree as to whether the system employed by the defendants was defective or otherwise..

RIDDELL, J., at trial, dismissed action with costs, 21 O. W. R. 808; 3 O. W. N. 980.

DIVISIONAL COURT dismissed appeal therefrom with costs.

*Moore v. Moore*, 4 O. L. R. 174, distinguished.

*Dego v. Kingston*, 8 O. L. R. and subsequent cases, referred to.

An appeal from a judgment of HON. MR. JUSTICE RIDDELL, 21 O. W. R. 808, 3 O. W. N. 980, dismissing the plaintiff's action.

The plaintiffs were the administrators of the estate of David Feduzzi. The defendants were lining a steel furnace with brick, the furnace being 16 feet in diameter, and the lining 3 feet thick. The system adopted was as the work proceeded to lay a flooring from time to time upon which the men who were engaged in the work could stand while laying the brick. An aperture was left sufficient to permit a bucket to be raised, carrying the material of brick and bags of cement.

The deceased, Feduzzi, was at the bottom of the shaft, and his duty was to place the material upon the hoist. To do this the hoist was pulled to one side so that it was unnecessary for him in doing his work to place himself immediately beneath the opening. On the occasion in question the hoist had been lowered containing some empty bags, which in removing the plaintiff, instead of pulling the hoist to one side and removing the bags without placing himself beneath the shaft, reached forward and so placing his head in the opening