

(3) that a life-line was not in place; (4) that there were no life-buoys on deck; (5) that the means of lowering a boat were out of order; and (6) that there was no crew competent to lower and man a boat.

The trial Judge apparently thought that, if all these things had been proved, he should not find that any or all of them, having regard to the whole evidence, was or were the cause of the young man's death. He was washed overboard by a heavy wave, which swept over the deck of the ship, and he was lost in the sea.

The evidence regarding the various grounds of negligence alleged was not clear and satisfactory.

Most of the acts or omissions charged, even if they had been proved, were not chargeable against the defendants, but only against fellow-workmen in a common employment.

It seemed impossible for a reasonable man conscientiously to find that any actionable negligence on the part of the defendants caused the death of the plaintiffs' son; to find that it was not an accident for which no one is blamable, or that it was not an accident caused by the want of a proper performance by their son and the other members of the crew of the duties they owed to one another as well as to the defendants.

The Ontario Workmen's Compensation for Injuries Act did not preclude the defendants from setting up the defence of common employment. The injury was sustained in a Glasgow, Scotland, ship, upon the high seas, by a workman serving under a contract made in Nova Scotia for a voyage from Sydney, in that Province, to Manchester, England, and return.

There was no course open to the Court but to dismiss the appeal.

Appeal dismissed with costs.

SECOND DIVISIONAL COURT.

OCTOBER 6TH, 1916.

ROWSWELL v. TORONTO R.W. CO.

Negligence—Street Railway—Man on Bicycle Struck by Car—Contributory Negligence — Ultimate Negligence — Evidence—Findings of Jury—Appeal.

Appeal by the defendants from the judgment of the County Court of the County of York in favour of the plaintiff, upon the findings of a jury, for the recovery of \$75 and costs, in an action for