I think, open to the jury upon the facts established before them. However this may be, the second finding of negligence is, in my opinion, of itself sufficient to support the judgment appealed from.

Mining is dangerous work. There was danger on the top deck, as well as down in the workings, though doubtless, as the mine captain says, there was greater danger below. There is a necessity for much greater care than mining companies, in their anxiety to win ore as cheaply as possible . . . would ordinarily exercise without compulsion. Hence the obligations imposed by statute in all mining countries. The Mining Act of Ontario, R.S.O. 1914 ch. 32, sec. 164, rule 45, prescribes the code of signals for raising or lowering a cage, and by rule 98 requires, inter alia, that "the manner of carrying on operations shall always, and according to the particular circumstances of the case, conform to the strictest considerations of safety."

Having regard to the finding that there was no contributory negligence, the immediate cause of the accident was some negligence on the part of the hoist-man, Davis. There is evidence that Davis was incompetent. . . . The findings, such as they are, seem to me of necessity to imply condemnation of the system in use— that the manner of carrying on operations according to the particular circumstances, that is, the novel, onerous, and dangerous work the deceased was performing, uninstructed, and the inexperience and incompetence of Davis, subject to no proper supervision, did not conform, as the statute required it to conform, to the strictest considerations of safety.

Such being the statutory obligation cast upon the defendants and not discharged, they cannot escape liability on the plea that Davis was a fellow-servant of Hull. As in Choate v. Ontario Rolling Mill Co. (1900), 27 A.R. 155, the negligence was really that of the employers in omitting to provide a proper system by which the dangerous character of the employment might be lessened, and in putting in charge of a dangerous machine and keeping there for part of the day and the whole of the night, without supervision and instruction, a man incompetent to manage the hoist. They were thus, like the defendants in Jones v. Canadian Pacific R.W. Co. (1913), 30 O.L.R. 331, "either the sole effective cause of the accident or a cause materially contributing to it."

I think the appeal should be dismissed with costs.

FALCONBRIDGE, C.J.K.B., agreed with LATCHFORD, J.