

Simberg was in the employ of the defendant Wallberg, who had a contract with the defendant Lowes, the owner of certain property known as number 92 Sherbourne street in Toronto, to demolish and remove the dwelling house and out-houses situate thereon. While so engaged, the north wall of the out-house, which it was alleged had been left in a dangerous condition, collapsed, falling upon the deceased Simberg, causing him injuries from which he died.

It was alleged that defendant John Gosnell was the owner of the property and so was liable for the result of this accident.

Tried at Toronto before HON. MR. JUSTICE BRITTON, with a jury.

J. M. Godfrey, for plaintiff.

W. H. Irving, for defendant Lowes.

G. M. Gardner, for defendant Gosnell.

L. Davis, for defendant Wallberg.

HON. MR. JUSTICE BRITTON:—The negligence charged is that of leaving the wall in a dangerous condition and not having it shored up or properly stayed or strengthened while the work of demolition was progressing.

At the trial the action was abandoned as against Gosnell, counsel for the plaintiff consenting to judgment going in Gosnell's favour.

At the close of the case motion was made by counsel for the other defendants respectively that the action be dismissed against them.

My decision was reserved, and questions subject to my ruling upon the motion were submitted to the jury. These questions were:

1. Were the defendants or either of them guilty of negligence which caused the death of Jacob Simberg? If one defendant only guilty of negligence, which one? Yes.

2. If so, what was that negligence? By leaving this wall in a dangerous condition.

3. Was the deceased Simberg in the place and doing the work assigned to him by Wallberg at the time of the accident? No.

4. Could the deceased Simberg by the exercise of reasonable care have avoided the accident? No.