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*Oct. 7.
*Oct. 26.

THE ROYAL ELECTRIC COMPANY (DEFENDANTS) ..... } APPELLANTS;

AND

JOSEPH PAQUETTE (PLAINTIFF) .....RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC.

*Negligence—Employer and employee—Disobedience of orders—Dangerous way, works and appliances.*

Where a foreman has given the necessary orders to ensure the safety of a workman engaged in dangerous work, an employee who disobeys such orders and, in consequence, sustains injuries, cannot hold his employer responsible in damages on the ground that the foreman was bound to see that the orders were not disobeyed. *Lamoureux* v. *Fournier dit Larose* (33 Can. S. C. R. 675) discussed and distinguished.

APPEAL from the judgment of the Court of King's Bench, appeal side, affirming the judgment of the Superior Court, sitting in review at Montreal, by which the judgment at the trial in favour of the defendants was reversed and the plaintiff's action was maintained and judgment for damages, assessed at $750, with costs, was ordered to be entered in his favour.

The facts of the case and questions in issue on this appeal are stated in the judgment now reported.

*R. Taschereau* for the appellants.

*Bisaillon K.C.* for the respondent.

The judgment of the court was delivered by:

DAVIES J.—We are all of opinion that this appeal should be allowed and the judgment of the trial judge dismissing the action restored.

*PRESENT :—Sir Elzéar Taschereau C.J. and Sedgewick, Girouard, Davies and Nesbitt JJ.

The question is really one more of fact than of law. The action was brought against the company by one of its employees for damages sustained by him in consequence of the alleged negligent unloading of a carload of large posts, thirty or forty feet in length, from a railway flat-car. The plaintiff was on top of the posts on the car for the purpose of cutting the wires which, for the purpose of holding the load firmly on the car, were fastened from three upright stakes on one side of the car to corresponding stakes on the other side. The negligence charged in the first instance was the cutting of the stakes too soon by the defendant's foreman or those acting under him while the plaintiff was at his work on the top of the posts, in consequence of which the posts rolled off carrying the plaintiff with them.

The evidence, as is generally the case in actions of this kind, was conflicting but the trial judge accepted the testimony of the witnesses for the defence that the plaintiff was warned to come down from his place of danger but persisted in remaining, saying that there was no danger, or words to that effect, and actually himself giving orders to one of the workmen to cut away the last retaining stake. Some five or six witnesses testify to these facts and we see no reason whatever to differ from the learned trial judge who accepted and acted upon their testimony.

The plaintiff, himself, was the author of his own injuries and by his own orders, neglect and carelessness brought them upon himself.

The judgment appealed from was attempted to be supported on the ground that the ropes used to break the fall of the posts from the car were old and rotten and not fit for the purpose. But, apart from the fact that this is not charged in the plaintiff's statement of claim as the negligence which caused or contributed to the

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plaintiff's injuries and is evidently an afterthought, we are clearly of the opinion that it was not the character of the ropes which either caused or contributed to the plaintiff's injuries, but his own conduct in persisting in remaining upon the load of posts after the wires had been cut, contrary to his orders, and himself directing the cutting away of the last retaining stake and so causing the load of posts to roll to the ground.

The case of *Lamoureux* v. *Fournier* (1) was cited by the respondent's counsel as authority for the proposition that the foreman was bound, in any case, to see that his orders to the plaintiff to come down were obeyed. But if the plaintiff chose to disobey them and himself bring about the accident which caused his injuries, he surely cannot hold the company liable. There were no reasons given for the judgment of this court in the case cited. It turned almost altogether upon questions of fact. The ground upon which we affirmed the judgment in that case was that the fall of the scaffold which caused the death of the plaintiff's husband was caused by its being overloaded with stone and that the appellant, whose duty it was to see that the scaffold was not overloaded, altogether neglected that duty, in consequence of which neglect the accident took place. The short note of the case in the Supreme Court Reports (1), does not shew the ground of our decision. We did not intend to affirm or approve of the principle of law stated in the head-note of the report of the case in the Quebec Reports (2), copied into the note of the decision of this court on the appeal, even if the language of that head-note is justified by the reasons given by the Court of Review,

(1) 33 Can. S. C. R. 675. (2) Q. R. 21 S. C. 9.

which I doubt. However, no such law was laid down by this court.

The appeal will be allowed with costs.

*Appeal allowed with costs.*

Solicitors for the appellants: *Préfontaine, Archer, Perron & Taschereau.*

Solicitor for the respondent: *Bisaillon & Brossard.*