

TEMISKAMING MINING CO. v. SIVEN.

1912

*May 22.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

*Negligence — Accident in mine — Fall of rock — Covering of shaft —
Fellow servant.*

APPEAL from a decision of the Court of Appeal for Ontario(1), maintaining the verdict for the plaintiff at the trial.

The plaintiff, Siven, was working in the defendants' mine when he was injured by a rock falling down the shaft and striking him. The rock came through a man-hole above the shaft where men were engaged in stoking and there was a trap-door over the mouth of the shaft which was open at the time. Before proceeding with the stoking the workman in charge sent a helper to see if this trap-door was shut and when the latter called out "everything is all right" went on with the work. If the trap-door had not been open the plaintiff could not have been injured.

The plaintiff brought an action at common law and under the "Mining Act" for damages in which the jury found that the defendants were guilty of negligence for not providing a suitable pentice for the protection of workmen in the shaft (as required by sub-sec. 17 of sec. 164 of the "Mining Act" of Ontario); they negatived contributory negligence by the plaintiff and

*PRESENT:—Sir Charles Fitzpatrick C.J. and Idington, Duff, Anglin and Brodeur JJ.

(1) 25 Ont. L.R. 524.

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assessed the damages at \$2,500, for which judgment was entered for the plaintiff.

The Court of Appeal maintained this verdict and held that the defendants could not rely on the doctrine of common employment as the accident was caused by breach of a statutory duty to which that doctrine does not apply.

The defendants appealed to the Supreme Court of Canada, which, without reserving judgment, dismissed the appeal with costs.

Appeal dismissed with costs.

H. E. Rose K.C. for the appellants.

A. G. Slaght for the respondent.
