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*Mar. 10.

THE CANADIAN COLOURED COTTON MILLS (DEFENDANTS)..... } APPELLANTS;

AND

ELIZABETH TALBOT (PLAINTIFF).....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Negligence—Defective machinery—Evidence for jury.

T. was employed as a weaver in a cotton mill and was injured, while assisting a less experienced hand, by the shuttle flying out of the loom at which the latter worked, and striking her on the head. The mill contained some 400 looms, and for every forty-six there was a man, called the "loom fixer," whose duty it was to keep them in proper repair. The evidence showed that the accident was caused by a bolt breaking by the shuttle coming in contact with it, and as this bolt served as a guard to the shuttle the latter could not remain in the loom. The jury found that the breaking of the bolt caused the accident, and that the "loom fixer" was guilty of negligence in not having examined it within a reasonable time before it broke. T. obtained a verdict, which was affirmed by the Court of Appeal.

Held, Gwynne J. dissenting, that the "loom fixer" had not performed his duty properly; that the evidence as to negligence could not have been withdrawn from the jury; and that, as there was evidence to justify their finding, the verdict should stand.

Per Gwynne J., that the finding of the jury that the negligence consisted in the omission to examine the bolt was not satisfactory, as there was nothing to show that such examination could have prevented the accident, and there should be a new trial.

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APPEAL from a decision of the Court of Appeal for Ontario, sustaining the verdict for the plaintiff at the trial.

The facts of the case are set out in the above headnote.

Martin Q.C. for the appellants.

Tate for the respondent was stopped by the court.

The judgment of the majority of the court was delivered by:

THE CHIEF JUSTICE (*oral*).—The injury to the plaintiff was due to the breaking of the bolt, and the only question is whether or not there is proof of negligence on the part of the servants of the company sufficient to justify the verdict.

I quite agree with the ruling of the court below that the plaintiff had no cause of action at common law, but I think she was entitled to recover under the Act of 1892.

Mr. Justice Osler was of opinion that the case could not have been withdrawn from the jury, and refers especially to the evidence of Bradley, whose duty it was to look after the looms. This witness states that although notified that something was wrong with the loom at which the accident occurred he did not examine it. I entirely agree with the view taken by Mr. Justice Osler that there was evidence for the consideration of the jury, and further, that there is no ground for a new trial.

The appeal is dismissed with costs.

GWYNNE J.—I am of opinion that the appeal should be allowed and a new trial ordered. The answers of the jury to the questions submitted to them are not sufficient to maintain the plaintiff's action; that action

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can only be sustained by proof that the loom out of which the shuttle proceeded which caused injury to the plaintiff was defective in some particular which could and should have been discovered by the defendant or his servants, and repaired so as to prevent the occurrence of the accident by which the plaintiff was injured, but the jury have not found that there was any defect in the loom, or if any, in what it consisted, so that it has not been proved whether it was of such a nature that the non discovery of it by the defendants or their servants in charge of the factory, and the non repair of the defect, constituted negligence for which the defendants are responsible. For this reason I am of opinion that there should be a new trial.

Appeal dismissed with costs.

Solicitors for the appellants: *Martin & Martin.*

Solicitors for the respondent: *Carscallen & Cahill.*