

1894

BRITISH COLUMBIA MILLS CO. v. SCOTT.

*Oct. 16. *Negligence—Master and servant—Employers' Liability Act—Evidence—*
 1895 *New trial.*

*Mar. 11. **APPEAL** from a decision of the Supreme Court of British Columbia, reversing the judgment at the trial by which the action was dismissed.

Scott, a workman in defendants' mill, brought an action for damages in consequence of being injured while passing over a set of cogs which were left uncovered, and upon which he slipped and had his leg dragged in by the cogs before they could be stopped. The jury found that there were other passage ways beside the cogs for plaintiff to use in fulfilling his duties, but that none of them was sufficient and the way used was more expeditious; that the non-covering of the cogs was a defective way; and that plaintiff was not unduly negligent. The trial judge held that Scott voluntarily incurred the risk and dismissed the action. His decision was reversed by the full court and a verdict entered for plaintiff with damages as assessed by the jury.

The Supreme Court ordered a new trial, being of opinion that it was not sufficiently established that plaintiff had of necessity (reasonable and practical necessity) to pass over a set of cogs which being uncovered were in a dangerous and defective state as charged in the statement of claim.

Appeal allowed with costs.

Robinson Q.C. for the appellants.

W. Cassels Q.C. for the respondent.

*PRESENT:—Sir Henry Strong C.J., and Taschereau, Gwynne, Sedgewick and King JJ.