1920

*Nov. 18, 19.
*Dec. 17.

IN RE PUBLIC UTILITIES ACT.

THE MONTREAL LOCOMOTIVE WORKS, LIMITED (DEFENDANT) } APPELLANT;

AND

GEORGE McDONNAUGH (PLAINTIFF). . . . . } RESPONDENT.

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

Negligence–Accident–Damages–Jury's findings–Inconsistency–New trial.

The respondent was injured by placing his hand on a defective electric motor in motion. He alleges that he was obliged to do so to ascertain if the motor was overheated; but the appellant contends that he acted contrary to instructions. The principal findings of the jury were:

"4.—Was the accident caused by the common fault of the plaintiff and the defendant; and if so, state in what the fault of each one consisted?

"Yes.—The defendant is to blame for having had a defective machine in operation, knowing that it was defective.

"The plaintiff is to blame for having exceeded what he was told to do, by getting up and putting his hand on the motor while in motion and taking unnecessary risks.—Unanimous."

The verdict of the jury, awarding $3,000 to the respondent, was affirmed by the Court of King's Bench.

Held, Idington J. dissenting, that a new trial should be ordered, as the jury's findings are obscure and inconsistent.

Judgment of the Court of King's Bench reversed, Idington J. dissenting and Mignault J. concurring *sub modo*.

APPEAL from the judgment of the Court of King's Bench, appeal side, province of Quebec, affirming the judgment of the trial judge, Guerin J., with a jury and maintaining the respondent's action.

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*PRESENT:—Idington, Duff, Anglin, Brodeur and Mignault JJ

The respondent was injured, while in the employ of the company appellant, by placing his hand on an electric motor which was defective. The respondent alleged that he did so in order to ascertain if the motor was overheated, which act was necessary in order to keep the motor in operation by oiling it if needed. The appellant company pleaded that the respondent's duty, according to instructions given, consisted only in replacing the fuses when they burned out. The jury, after finding that the accident was not due to the sole fault of either the appellant or the respondent, answered to question 4 as reported in the head-note. The appellant's ground of appeal is that there is no relation of cause and effect between the defective condition of the machine and the injuries which the respondent sustained. The respondent contends that the verdict is not clearly wrong and therefore must stand.

A. Chase-Casgrain K.C. for the appellant.

Ernest Pélissier K.C. for the respondent.

IDINGTON J. (dissenting)—There is much in the form of the verdict of the jury which is open to criticism.

But reading it as a whole there is one thing clear and that is that the contention of the appellant never was intended by the jury as its verdict.

I prefer giving it, as the evidence justifies and the learned trial judge and the unanimous holding of the Court of King's Bench did, a rational meaning.

To do so this appeal should be dismissed with costs.

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Duff J.

DUFF J.—I concur in the view of the court below that there was evidence to support the verdict for the plaintiff if the jury had found such a verdict after a complete and proper direction by the trial judge.

But the questions for the jury were eminently debatable ones and it is a case in which a judgment for the plaintiff ought not to be sustained unless two conditions are satisfied: 1° that the trial judge by his charge brought home to the comprehension of the jury the nature of the questions upon which they had to pass and 2° that there should be no substantial doubt as to the meaning of the jury's finding. Neither of these two conditions is satisfied. I think it is gravely questionable that the jury understood the questions they were asked to answer; and further, after a good deal of consideration, I am quite unable to satisfy myself as to the meaning of their answers. There should be a new trial and all costs, including the costs of this court, should abide the event of the new trial.

ANGLIN J.—Greatly as I regret the necessity for the adoption of that course I see no way to avoid ordering a new trial of this action. The meaning of the jury's findings is at best obscure. Putting upon them the most benevolent interpretation of which they are susceptible they seem to be hopelessly inconsistent.

The fault attributed to the defendants is the operation of a machine known to be defective. But, admittedly, the defect in the machine did not itself expose the plaintiff to any risk. Unless we are to attribute to them an utter disregard of the requirement that to be actionable fault must be a proximate cause of the injury—*dans locum injuriae*—the jury must be

taken to have meant that the operation of the defective machine entailed duties on the plaintiff in the discharge of which he was exposed to unnecessary and unwarranted risk of injury. Yet they found as fault on his part that in performing the act which was the immediate cause of his being injured he exceeded what he was told to do and took unnecessary risks.

It is suggested for the plaintiff that by this latter finding the jury merely meant that, although it was part of his duty to see that the defective bearing did not become overheated and therefore to ascertain its condition from time to time by feeling the casing covering it, he was not sufficiently cautious in doing so. But the verdict scarcely admits of that interpretation and attributing the intention to the jury of making such a finding is almost pure conjecture. If taken literally the finding ascribes to the plaintiff fault of such a character that the conclusion is almost inevitable that it was the sole cause of the accident. But the jury negatived that view and expressly found that there was fault on the part of the defendants which contributed to causing the injury. A somewhat meagre charge, particularly as to the necessity for direct causal connection between any fault to be found and the injury sustained, may to some extent account for the difficulties which the findings present. At all events it seems to me that they are insuperable and that justice to both parties requires that a new trial should be had. Costs of the abortive trial should abide the event. The costs of the appeals to the Court of King's Bench and to this Court should be costs in the cause to the appellant payable to it in any event of the action.

BRODEUR J.—I concur in the result.

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Mignault J.

MIGNAULT J.—In this case the majority of the court is of opinion that the appeal should be allowed and a new trial ordered. I would have been ready to express my views on the merits of the respondent's action and to state whether it should be maintained or dismissed. I realize however that such an expression of opinion might possibly influence or embarrass the new trial now ordered. So, while I would have preferred to dispose immediately of the action on its merits, I will not dissent from the judgment ordering a new trial.

Appeal allowed with costs.

Solicitors for the appellant: *Casgrain, McDougall, Stairs & Casgrain.*

Solicitor for the respondent: *J. E. C. Bumbray.*