

20, 1915

In the Privy Council

On Appeal from the Appellate Division of the
Supreme Court of Ontario

BETWEEN :

THE TORONTO POWER COMPANY LIMITED,
(Defendants) APPELLANTS,
AND
KATE PASKWAN,
(Plaintiff) RESPONDENT.

Record of Proceedings

CHARLES RUSSELL & Co.,
37, Norfolk Street,
Strand,
London, W.C.,
For Appellants.

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(Plaintiff) RESPONDENT.

RECORD OF PROCEEDINGS.

10

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In the Supreme Court of Ontario

RECORD.

*In the
Supreme
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Ontario.*

No. 1
Statement
of Case.

BETWEEN :

KATE PASKWAN,

PLAINTIFF,

AND

THE TORONTO POWER COMPANY, LIMITED,

DEFENDANTS.

STATEMENT OF CASE.

10 This is an action brought by Kate Paskwan, widow of John Paskwan, deceased, claiming \$5,000 damages for the death of the said John Paskwan, who was killed while in the employ of the defendant company. The case came on for trial before the Honourable Mr. Justice Kelly and a jury at St. Catharines on the 14th day of October, 1913, and on the 27th day of October, 1913, judgment was directed to be entered in favour of the plaintiff for the sum of \$6,000.00 and costs.

20 From this judgment the defendants appealed to the Appellate Division of the Supreme Court of Ontario, the appeal coming on for hearing on the 21st day of January, 1914, when judgment was reserved, and on the 5th day of February, 1914, judgment was given dismissing the appeal with costs.

From this judgment the defendants now appeal to the Privy Council.

RECORD.

*In the
Supreme
Court of
Ontario.*

No. 2
Statement
of Claim

IN THE SUPREME COURT OF ONTARIO.
HIGH COURT DIVISION.

Writ issued the 5th day of May, A. D. 1913.

BETWEEN:

KATE PASKWAN,

PLAINTIFF,

AND

THE TORONTO POWER COMPANY LIMITED,

DEFENDANTS.

STATEMENT OF CLAIM.

10

(As Amended)

1. The plaintiff is the widow of John Paskwan, deceased, who was killed on or about the 8th day of February, 1913, while working at the power-house of the defendants at Niagara Falls, Ontario. The said plaintiff sues not only on behalf of herself, but also on behalf of her daughters, Anna and May, aged respectively 16 and 15 years, stepdaughters of the said deceased who were dependent upon and received support and maintenance from the said deceased.

2. On or about the 8th day of February, 1913, the said John Paskwan was employed by the defendants and while in the discharge of his duty as a rigger he was killed by a pulley block falling from a travelling crane. 20

3. The death of the said John Paskwan was caused by the hereinafter mentioned negligence of the defendants.

4. The defendants were negligent inasmuch as the superintendent of the defendants, one McCarthy, directed the craneman to lower a block of one hoist and raise the block of another hoist at the same time, and thereby causing the block of the latter hoist to come in contact with the drum of the said hoist in such a way as to break the cable, with the result that the block fell as aforesaid and killed the said John Paskwan. 30

5. The defendants were further negligent inasmuch as they failed to provide a proper signalman to direct the operation of the crane by the said craneman.

6. The defendants were further negligent, inasmuch as their superintendent, the said McCarthy, was negligent in his superintendence of the said operation, and as a result of said negligence the said John Paskwan sustained the injuries which caused his death.

7. The defendants were further negligent, inasmuch as they failed to equip the said crane with the proper devices for stopping the drum before the block of the said pulley came in contact with the said drum in such a way as to break the cable.

7a. The defendants were further negligent, inasmuch as the crane-man was a person having charge or control of the defendants' equipment or machinery upon a railway or tramway, and he negligently operated the said crane in such a manner as to permit the block coming in contact with the drum so as to break the cable and permit the block to fall upon the
10 plaintiff.

7b. The defendants were further negligent in that the superintendent, McCarthy, knowing the manner in which the said crane was being ordered negligently ordered the said deceased to perform duties beneath the said crane, and it was the result of complying with the said orders that the deceased received the injuries which resulted in his death.

7c. The defendants were further negligent in that they maintained and operated a defective system of operating the said crane, inasmuch as two blocks in the said travelling crane were to be operated simultaneously by one operator, whereas the proper and efficient system was to have two
20 operators and a separate operating device for the different hoists.

8. The plaintiff claims \$5,000 damages and the costs of this action.

9. The plaintiff proposes that this action be tried at the city of St. Catharines, in the County of Lincoln.

DELIVERED this 2nd day of September, 1913, by Samuel King, 15 Wellington street east, Toronto, Solicitor for the plaintiff.

RECORD.

—
*In the
Supreme
Court of
Ontario.*

—
No. 2
Statement
of Claim.

RECORD.

*In the
Supreme
Court of
Ontario.*

No. 3
Statement
of Defence.

IN THE SUPREME COURT OF ONTARIO.
HIGH COURT DIVISION.

BETWEEN :

KATE PASKWAN,

PLAINTIFF,

AND

THE TORONTO POWER COMPANY, LIMITED,

DEFENDANTS.

STATEMENT OF DEFENCE.

1. The defendants admit the allegations contained in the first para- 10
graph of the plaintiff's statement of claim.

2. The defendants deny the allegations contained in paragraphs two,
three, four, five, six and seven of the plaintiff's statement of claim, and
further deny that the death of the said John Paskwan was caused by any
negligence on the part of these defendants, or on the part of any superin-
tendent of the defendants, or by reason of any neglect to provide proper
signals to direct the operation of any machinery, or to properly equip the
said machinery with proper devices.

3. The defendants further allege that the death of the said John Pask-
wan was caused by his own negligence and want of care. 20

4. The defendants say that this action should be dismissed against
them with costs.

DELIVERED this 10th day of September, A.D. 1913, by McCarthy,
Osler, Hoskin & Harcourt, 69 Yonge street, Toronto, Solicitors for the de-
fendants.

IN THE SUPREME COURT OF ONTARIO.
HIGH COURT DIVISION.

BETWEEN :

KATE PASKWAN,

PLAINTIFF,

AND

THE TORONTO POWER COMPANY, LIMITED,

DEFENDANTS.

JOINDER OF ISSUE.

10 The plaintiff joins issue on the defendants' statement of defence herein.

DELIVERED this 12th day of September, 1913, by Samuel King, 15 Wellington street east, Toronto, Solicitor for the plaintiff.

To McCarthy, Osler, Hoskin & Harcourt,
Solicitors for the defendants.

RECORD.

*In the
Supreme
Court of
Ontario.*

No. 4
Joinder
of Issue.

RECORD.

*In the
Supreme
Court of
Ontario.*

No. 5

Jury
Notice.

IN THE SUPREME COURT OF ONTARIO.
HIGH COURT DIVISION.

BETWEEN :

KATE PASKWAN,

PLAINTIFF,

AND

THE TORONTO POWER COMPANY, LIMITED,

DEFENDANTS.

JURY NOTICE.

The plaintiff requires that the issues in this cause be tried by jury. 10

DELIVERED this 12th day of September, 1913, by Samuel King, of
15 Wellington street east, Toronto, Solicitor for the plaintiff.

To McCarthy, Osler, Hoskin & Harcourt,
Solicitors for the defendants.

IN THE SUPREME COURT OF ONTARIO.
HIGH COURT DIVISION.

RECORD.

*In the
Supreme
Court of
Ontario.*

PASKWAN vs. TORONTO POWER.

Tried by HONOURABLE MR. JUSTICE KELLY and a Jury at St. Catharines, October 14th, 1913.

No. 6
Evidence
at Trial.

MR. T. N. PHELAN, with MR. A. FRASER, for the plaintiff.
MR. D. L. MCCARTHY, K. C., for defendants.

MR. PHELAN: I served some time ago on the defendants, or the solicitor for the plaintiff did, Notice of Motion to amend by setting up certain
10 inferences of negligence from the facts. I am asking leave to amend on the terms of the Notice of Motion served, My Lord.

HIS LORDSHIP: How long since it was served?

MR. PHELAN: On the 30th September, My Lord.

MR. MCCARTHY: I am not taking any objection.

HIS LORDSHIP: File a copy.

MR. PHELAN: I will put in a copy, My Lord.

MR. MCCARTHY: I have it here. My Lord, and I have had it underlined in red ink for Your Lordship's convenience.

HIS LORDSHIP: Have you another copy?

20 MR. MCCARTHY: Yes, My Lord. My learned friend's suggested amendment is marked with red ink.

I suppose in this case it might be well that the eye-witnesses be excluded?

MR. PHELAN: I would go further—all witnesses be excluded.

MR. MCCARTHY: There are some witnesses who did not see the accident at all, experts.

MR. PHELAN: They should be excluded.

MR. MCCARTHY: I don't think so. My learned friend says he is going to allege certain appliances would be an improvement to the plant. He
30 has not suggested what those are; I do not know what the appliances are. I submit I am entitled to have experts here to advise me in the cross-examination in case these points come up.

HIS LORDSHIP: If you have one experienced expert beside you to advise you?

MR. PHELAN: I am content

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 No. 6
 Evidence
 at Trial.

—
 Dr. Francis
 Wilson,
 Examination.

MR. McCARTHY: I presume so.

HIS LORDSHIP: I can quite understand how counsel wants to be fully instructed.

MR. PHELAN: I have no objection to Mr. McCarthy having one expert.

HIS LORDSHIP: Select one of your experts to remain with you, Mr. McCarthy. If Mr. Phelan wants a similar—

MR. PHELAN: If I do I will call him in, My Lord. In the meantime I have sent them out.

MR. McCARTHY: Not knowing what the devices are I do not know which expert to keep. That will be my difficulty. 10

HIS LORDSHIP: Have you different experts for different purposes?

MR. McCARTHY: I cannot tell. Your Lordship will see my learned friend in his amendment makes certain suggestions. I do not know what they are. In opening to the jury he said there were defects in the construction and also defects in the management. I have a construction man here; I have the Mechanical Superintendent here.

HIS LORDSHIP: I think counsel should have the benefit of some person to give expert advice.

MR. PHELAN: I assume all Mr. McCarthy's experts are crane experts, and if they are crane experts they will know how to construct and operate a crane. 20

MR. McCARTHY: My learned friend makes a distinction between operating and appliances. A man may construct a crane and put it up according to certain specifications—

HIS LORDSHIP: Evidence of a technical kind against the construction and mode of operation?

MR. McCARTHY: Yes, My Lord.

HIS LORDSHIP: I do not want to shut out the number of experts counsel thinks necessary. 30

MR. PHELAN: I think if Mr. McCarthy keeps the one, and if he wants the other we will allow him to come in.

HIS LORDSHIP: I will allow you to make a further application if it becomes necessary.

MR. McCARTHY: It is not usual to exclude different experts any more than doctors.

HIS LORDSHIP: You can apply again if the expert you retain is not familiar with the point under discussion.

MR. PHELAN: If Mr. McCarthy tells me he wants another in I will make no objection. 40

MR. McCARTHY: That is quite satisfactory.

HIS LORDSHIP: It will be open to Mr. McCarthy to make application.

DR. FRANCIS WILSON, Sworn. Examined by MR. PHELAN:

Q. Did you attend to Paskwan as the result of his injuries? A. I did.

Q. Describe to the jury the nature and extent of the injuries? A. The man was apparently suffering, when I found him in the offices of the Toronto Power Company some half hour or hour after the accident, from a fracture to the base of the skull. He was unconscious, bleeding from the nose and ears, and respirations irregular and pulse very weak. We attempted resuscitation at the offices of the Power Company by the administration of oxygen, removing all obstruction from the mouth. I remember he had a cud of tobacco in his mouth at the time, which was removed, and he seemed to revive somewhat. He was placed in the ambulance and sent to the Niagara Falls General Hospital. After arriving there he sank rapidly, and if I remember correctly he died about 7 o'clock.

Q. How long after the accident? A. Three or four hours after the accident.

Q. Describe to the jury the nature of the injuries?

MR. MCCARTHY: No question about that.

MR. PHELAN: Q. The injuries were the cause of death? A. Yes.

MRS. KATIE PASKWAN, Sworn. Examined through interpreter.

COURT CLERK: Does she understand English at all?

INTERPRETER: Understands a little, but can't talk plain.

Interpreter was sworn.

MR. PHELAN: Q. Ask her if it was her husband who was killed when working for the Toronto Power Company? A. Yes.

Q. What date was he killed? A. 8th February.

Q. Of this year? A. This year.

Q. How old a man was he? A. 28 years.

Q. How old are you? A. 48.

Q. Were there any children of this marriage? A. No.

Q. Were there any children of a previous marriage? A. No.

Q. Did she have any children before she married this man? A. She had two daughters.

Q. What are their names? What is the first one? A. Annie is 16.

Q. What date was she born on? A. 8th February.

Q. She was 16 years old last February? A. Last February.

Q. That would be February 8th, 1896? A. Yes.

Q. What age is the younger one? A. 15.

Q. When was she born? A. Christmas.

Q. What is that, 25th December? A. Yes.

Q. When was she 15? A. 25th.

Q. Last 25th or the next? A. Last 25th.

Q. Her name was what? A. May.

Q. What was her husband doing for the Toronto Power Company?

A. He was a rigger.

Q. What wages was he earning? A. \$3.00 a day.

Q. How long had he been working there before he was killed? A. It was one day.

RECORD.

—
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No. 6
Evidence
at Trial.

—
Dr. Francis
Wilson
Examina-
tion.

—continued

No. 6
Evidence
at Trial.

—
Mrs. Katie
Paskwan,
Examina-
tion.

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at Trial.

—
Mrs. Katie
Paskwan,
Cross-Ex-
amination.

- Q. Was he killed the first day or the second day? A. First day.
Q. What kind of a man was he, strong or weak? A. He was a strong man.
Q. Ever have any sickness after you married him? A. No.

CROSS-EXAMINED by MR. MCCARTHY:

- Q. When did you marry Paskwan? A. Three years last July.
Q. You had two children when you married him, Annie and May?
A. Yes.
Q. What was he doing before he went to the Power Company? A. Niagara Electric Railway Company. 10
Q. How long had he been there? A. 8 years.
Q. 8 days? A. No, 8 years.
Q. What was he getting there? A. \$2.25 a day.

—
No. 6
Evidence
at Trial.

—
George
Arthur
Dion,
Examina-
tion.

GEORGE ARTHUR DION, Sworn. Examined by MR. PHELAN:

- Q. What is your occupation? A. A rigger.
Q. What are the duties of a rigger? A. A rigger is supposed to be able to handle ropes and move heavy machinery.
Q. Where were you working in February of this year? A. On the 8th day of February this year I was working at the Toronto Power House. 20
Q. Their plant is where? A. In Queen Victoria Park, Niagara Falls, Ontario.
Q. Situated on the Niagara River? A. Yes.
Q. Did you know Paskwan, who was killed? A. I knew him from 7 o'clock that morning; he just started to work.
Q. Were you there when he was killed? A. Yes.
Q. What are the wages of a rigger? A. From \$3.00 up to \$3.50.
Q. A day? A. Yes.
Q. All year round? A. Yes.
Q. What were you getting at the time of the accident? A. \$3.00. 30
Q. Where were you and Paskwan working at the time of the accident?
A. In the forebay, on some stop logs.
Q. I have drawn a rough sketch of the ground floor of the company's plant. Do you recognize that sketch? (Shows.) A. Yes.
Q. I have indicated by an arrow the direction the river flows. How long was the building? A. About 500 feet long.
Q. And about how wide? A. You mean just the forebay?
Q. No, the whole building? A. One hundred feet, I should judge.
Q. There was part of the plant you call the forebay. How was that separated from the rest of the building? A. By a heavy brick wall. 40
Q. How wide was the forebay? A. Oh, about 40 feet, I should judge
—35 or 40 feet.

Q. Will you describe the forebay; what it consists of? A. Consisted of head gates, water—

Q. Taking the most important part of it first? A. There is the main part there. (Shows.)

Q. There was a channel for the water to run through, first of all? A. Yes, a raceway for the water.

Q. A race or canal. How wide was that race? A. About 20 feet, I should judge.

10 Q. What was the remaining 20 feet of the forebay made up of? A. Concrete flooring.

Q. The water would be some few feet below the concrete flooring? A. Yes, sir.

Exhibit 1: Rough sketch of ground floor of plant.

Q. Does this part I have partitioned off indicate the forebay? A. Yes.

Q. The mark I have drawn here, will that indicate roughly the concrete walk? A. Yes.

Q. This space will indicate the mill-race? A. Yes.

Q. Situated at some height above the floor, what was there in this forebay? A. An electric crane.

20 Q. That crane was how wide? A. About just the same width as the forebay.

Q. On what was the crane operated? A. It ran up and down the forebay on tracks, and operated by electricity.

Q. How long would those tracks be? A. From one end of the forebay to the other.

Q. The length of the building, about 500 feet? A. Yes.

Q. If I understand it right, there would be one track on each side of the building? A. Yes.

Q. And wheels on the track on each side? A. Yes.

30 Q. The steel work of the track extended across that? A. The trusses.

Q. That crane you told us was operated by electricity? A. Yes, sir.

Q. Where was the operator located? A. He was in a cage on the crane.

Q. Which side of the cage was the crane on? A. On the river side of the crane.

Q. That is the outside of the building? A. Yes.

Q. By the way, on this outside--what you call the river side--there was another brick wall? A. Stone wall.

40 Q. That is the main outside wall of the building on the river side? A. Yes.

Q. He sat in the cage on the river side of the crane? A. Yes.

Q. How many pulleys or lifting devices were there on this crane? A. Two.

Q. How do they compare? A. One is a 10-ton hook and the other is a 50-ton hook.

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Ontario.

No. 6
Evidence
at Trial.

George
Arthur
Dion,
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tion.

—continued

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—
*In the
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 Evidence
 at Trial.

—
 George
 Arthur
 Dion,
 Examina-
 tion.

—*continued*

Q. How do they compare in size? A. One is a good deal bigger than the other; the small hook weighs about 200 pounds.

Q. The hook and pulley, or just the hook? A. Yes.

Q. The small hook and pulley weigh 200 pounds, and the larger one will weigh how much? A. I should judge 700 or 800 pounds.

Q. Are they stationary on the truss? A. No; they are fastened with cables.

Q. Separate cables? A. Yes. The small hook is on a separate drum, and the big hook is on a separate drum.

Q. The two hooks are on separate cables, and the cables attached to 10 separate drums? A. Yes.

Q. Are they operated by the same or different levers? A. By separate levers.

Q. Are the drums and cables and hooks stationary on the truss? A. The drums are not stationary on the truss.

Q. In what direction do they move? A. They move the opposite way the crane moves.

Q. The crane runs lengthways in the forebay, and the drums and pulleys move crossways? A. Yes.

Q. The operator can move the crane and drop either one of the hooks 20 at any point in the forebay? A. Yes.

Q. And place one of the hooks promptly over any object, no matter where it is in the forebay? A. Yes, sir.

Q. How is the crane moved lengthways, and how are the pulleys moved crosswise? A. By a controller that is up in the crane operator's cab.

Q. So that he has all these operations in addition to the rest of the machinery—has these four operations to look after? A. Yes.

Q. Who was the man who was operating the crane on the day of the accident. A. William Hartary. 30

Q. I think I have his name here in my brief. Do you know how long he had been with the company? A. I don't know the exact number of days.

Q. How old was he? A. I should judge about 21 years of age.

MR. MCCARTHY: Does he know?

MR. PHELAN: Q. You judged by appearance he was 20 or 21 years of age? A. 20 or 21 years.

MR. MCCARTHY: Q. How long was he there? A. I don't know how long he was there.

MR. PHELAN: Q. What size of cable is there on this crane, or on these hooks? A. I think it is one-half inch cable. 40

Q. This accident happened on the 8th February. Who was foreman of the riggers on that occasion? A. Mr. Sheppard.

Q. Before the accident happened what had the craneman been doing? A. The craneman had been working down the forebay, pulling out ice racks to get the ice knocked off them.

Q. Tell the jury how that operation was performed. How were the ice racks pulled out? A. They are pulled out with the small hook on the crane.

Q. The operator would run his crane down until he got it directly over the rack he wanted to lift? A. Yes, sir.

Q. And then he would move his hook to the right or to the left until he would get it directly over the particular rack? A. Yes.

Q. Then he would by throwing over his lever drop the hook on the pulley, and it would be caught into the rack, and the rack lifted out of the water? A. And then hammer the ice off with hammers.

Q. And then the rack would be replaced in the water? A. Put back in place.

Q. That operation was being performed with which hook? A. The small hook.

Q. Then the small hook would be located just at the edge of the concrete platform; would that be correct? A. Probably about 5 or 6 feet from the floor.

Q. I mean taking it to the right or the left? A. To lift the rack with?

Q. Yes. A. Yes; it has to go a foot above the floor.

Q. I am not speaking about that. I am taking the position of the small hook on the truss? A. It would be right over the top of the racks.

Q. That is, it would be just over the edge—? A. Of the forebay.

Q. And over the edge of the concrete platform? A. Yes.

Q. These racks went right down alongside the concrete platform. A. Yes.

Q. Would they extend above the concrete platform? A. Yes, about 12 or 15 inches.

Q. How do they appear above the platform? A. There is a turn on the top of them.

Q. Which direction? A. Towards the main floor of the power-house.

Q. These racks came up out of the water and turned about 10 or 12 inches over the concrete floor? A. To prevent anyone from walking in.

Q. The small pulley—the drum rather, would be directly above this hook? A. Yes.

Q. And the pulley dropped straight down to the rack? A. Yes.

Q. That is what you had been doing. Prior to that had anything else been removed in the forebay? A. Not with the exceptions of them racks that I know of.

Q. What about the stop logs? A. We was just getting ready to get a lift on them.

Q. Where had the stop logs been taken from? A. Out of the forebay previous to that day.

Q. Previous to that day you had taken out the stop logs. What were the stop logs used in the forebay for? A. They had got the head gates constructed—

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No. 6
Evidence
at Trial.

—
George
Arthur
Dion,
Examina-
tion.

—continued

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—
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—
 No. 6
 Evidence
 at Trial.

—
 George
 Arthur
 Dion,
 Examina-
 tion.
 —continued

Q. They did not have all these grills ready? A. All these grills or machines wasn't in.

Q. They substituted for the grills the stop logs? A. Yes.

Q. Describe these stop logs to the jury? A. About 15 feet long, I should say 18 x 18 timbers.

Q. Square timbers 15 feet long, and these were in the forebay on top of one another, forming a dam? A. Bolted together.

Q. They prevented the water running through the sluices into the water wheels? A. Yes.

Q. And the water wheels turn the dynamo? A. Yes. 10

Q. How many of these stop logs had been taken out? A. How many sections, do you mean?

Q. Yes. A. They take them out as they go along, when they need them out.

Q. The day before the accident how many had been taken out? A. There must have been three or four sections.

Q. Where were those sections? A. They were in the forebay. We took them out of the forebay.

Q. Where were they located just before the accident? A. They was located on the concrete floor. 20

Q. Just explain to the jury how they were placed on the concrete floor? A. They were laying flat on the concrete floor, and we had to get a cable slung around them and lift them up and get them out of there into another part of the power-house.

Q. They were laying flat on the floor. In what direction were they pointing? A. They were laying lengthwise on the floor.

Q. And pointing in what direction? A. Pointing towards the forebay.

Q. Does this dark mark on the rough sketch indicate just how they were situated on the floor? A. Yes, sir. 30

Q. We will mark that "stop logs." Just opposite the stop logs, and extending across the channel, what was there? A. There was two I-beams there.

Q. On top of these I-beams was what? A. There was some stop logs sitting on top of them.

Q. What was there on top of the stop logs? Were there any workmen there?

MR. MCCARTHY: Do not suggest.

WITNESS: They were not stop logs.

Q. What were they? A. A plank. 40

Q. What was there on the plank? A. Two men sitting there holding the cable sling.

Q. Two I-beams across the channel, about how far apart? A. I don't know just the distance.

Q. A plank across the I-beams? A. Plank spanned the two I-beams

and two men sitting there holding the cable sling for the hook to come down and hook it in.

Q. Around what was the cable slung? A. Around the stop logs.

Q. What was it, a single sling? A. I think it was 1 inch cable. It had an eye in each end of it, passed one eye through the other and then put one eye on the hook—that is what we were going to do.

Q. So that when the logs are lifted the sling would tighten around them? A. Yes.

10 Q. On the other end of the sling was another eye? A. To hook the hook in.

Q. Through which the hook would be inserted? A. Yes.

Q. The intention was to raise those beams in the sling and move them into the next room? A. Pass them through the door along to the other crane.

Q. Where the other crane would pick them up? A. Yes.

Q. There were other cranes of a similar nature in the main building? A. Yes.

HIS LORDSHIP: What did he say the men were doing?

20 MR. PHELAN: Holding the end of the sling preparatory to slipping the hook through it when it came down on the pulley.

Q. Is that what I understand you to say? A. Yes.

Q. What was Paskwan doing? A. Just got there helping them to put the sling around the stop logs, and he was waiting for the crane to come down.

Q. How far away was the crane down the forebay from the stop logs at this time? A. I should judge about 75 feet when I seen it.

Q. Performing the other operation which you have described to the jury. What occurred at that time? A. Sheppard called the crane runner to bring the crane down there; he wanted to make a lift.

30 Q. To bring the crane from where he was working? A. Over to where we were working.

Q. Back to the stop logs? A. Yes.

Q. That operation would move the crane up the forebay a distance of about 75 feet? A. Yes.

HIS LORDSHIP: Ask him what Sheppard said.

MR. PHELAN: Q: What did Sheppard do or say? A. Called the crane runner.

Q. Saying what to him? A. "Come on down here, we want a lift; we are going to lift these logs."

40 Q. What did the crane runner do? A. Started the crane coming down to where we were working.

Q. Just describe to the jury what you saw from that point? A. I seen the crane come down there, and the small hook—

Q. You told us they had been using the small hook on the racks? A. Had been using the small hook?

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Q. Where was the small hook, up or down, when the crane started to move? A. Down, probably 12 feet from the ground when he started coming down the forebay. Sheppard told him to take up the small hook and lower the big hook.

Q. Sheppard told him to take up the small hook and lower the big hook? A. Give him a signal to that effect.

Q. Just show or indicate that signal to the jury? A. Take up on the small hook, like that—(illustrates by moving both arms).

Q. And lower down? A. Lower down on the big hook, like that—(illustrates by moving arms). 10

MR. MCCARTHY: Q. What were the signals? A. Go up on the small hook (illustrates) and down on the big hook (illustrates).

MR. PHELAN: Q. Did you see Sheppard give that signal to the operator? A. Yes.

Q. Was that signal given to the crane operator before or after he stopped his crane after moving it up the forebay? A. Given after he stopped the crane over where we were working.

Q. The operator had brought the crane up the forebay and stopped it—shall we say directly over the I-beams? A. I couldn't say whether it was directly over the top of them. I know he stopped it over the stop logs. 20

Q. In obedience to the signal, what did he do? A. Turned around and picked up a hammer or axe, I don't know which it was.

Q. You are speaking of Sheppard? A. That is who I thought you meant.

Q. Alright, let us have that. After Sheppard gave the signal what did he do? A. Turned around and picked up an axe or hammer—I forget which it was—and started breaking ice off the stop logs, the same as I was doing.

Q. In that position where was his back with reference to the crane? A. Would be turned to the crane. 30

Q. Would it be possible that Sheppard in that position could see what operation was going on with the crane? A. Not unless he could see through the back of his head.

Q. He would have to turn to see. While Sheppard was in that position did you watch the crane? A. I was watching the crane for a few moments, and then I was hammering away at the ice myself.

Q. Before you started to hammer the ice what did you see on the crane? A. What did I see?

Q. Yes. A. I seen the big hook coming down and the small hook going up. 40

Q. How high had the small hook got when you last saw it? A. I should judge about 8 feet from the top.

Q. That is from the drum? A. Yes, from the drum.

Q. It had gone up until it was within 8 feet of the drum; and what was the big hook doing? A. The big hook was coming down.

Q. Were they both in motion at the same time? A. Yes.

Q. When the small hook had reached a point about 8 feet, as you say, from the top, where was the big hook? A. The big hook was about 15 feet, I guess—probably 12 feet—from over the top of them men's heads; that is, the men that were working on the plank.

Q. What was the big hook doing? A. It was swaying.

Q. In which direction? A. Swinging up and down stream.

Q. What caused it to do that? A. The sudden stop of the crane, I should judge, or moving the carriage.

10 Q. Had the carriage been moved before the raising or lowering of the pulleys had started? A. I didn't see the carriage move.

Q. Was the small hook in the same location—?

MR. MCCARTHY: He did not see it.

MR. PHELAN: Q. As it was when it was lifting the rack? A. Yes.

Q. The large hook was swaying over the men's heads? A. Yes.

Q. About what distance was it swaying? A. Oh, probably about 2 feet of sway in the big hook.

Q. Where was the big hook with reference to the men standing on the plank? A. I don't get that.

20 Q. Where was the big hook with reference to the men on the plank? A. Right over the top of their heads.

Q. What was the next thing you heard or saw? A. The next thing I heard, I heard something snap; a few seconds afterwards I looked up, and there was a crash. I didn't know what was going on. I turned around and I seen Paskwan laying down on the stop logs with a hole through the back of his head.

Q. What had hit him? A. The hook off the crane.

Q. What else? A. The sheave.

Q. Do you call the pulley the sheave? A. Yes.

30 Q. Which hook or pulley was it? A. The ten-ton hook.

Q. The little one? A. Yes.

Q. That is the one nearest—? A. Nearest to the main part of the building.

Q. That you say had struck Paskwan on the back of the head? A. Yes.

Q. Did you give Paskwan any assistance? A. To put the cable sling around—?

Q. No, after he was injured? A. In fact they all give him assistance.

Q. He was carried into the office? A. Two of the fellows went and got a stretcher.

40 Q. He was carried into the office? A. Until the ambulance came; yes.

Q. How long did he live? A. Seven o'clock they say he died.

Q. After Sheppard had given the order to the craneman to raise and lower the two blocks, the two pulleys, did he do anything else or give any other orders? A. No, sir.

Q. Did you receive any order from him? A. I received an order to go

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over and help crack the ice off, get the ice off the stop logs—all the order I received.

Q. You got that order from whom? A. From Sheppard.

Q. When did you get that order? A. Just as I seen the small hook about 8 feet from the drum.

Q. Was that before or after Sheppard had given the signals? A. Afterwards.

Q. At that time Sheppard was doing what himself? A. Hammering away on the stop logs himself.

Q. Did Sheppard say anything to the craneman after the accident? 10

MR. McCARTHY: That is not evidence.

WITNESS: He told him—

MR. PHELAN: Wait a moment.

HIS LORDSHIP: What is this?

MR. PHELAN: A statement Sheppard made to the craneman about his conduct immediately after the accident.

MR. McCARTHY: Surely that is not evidence against the company.

MR. PHELAN: He was the company's foreman.

MR. McCARTHY: That would be opinion evidence.

HIS LORDSHIP: If it were something really part of the transaction, 20 happening immediately, I do not know that.

MR. McCARTHY: Your Lordship means if it was part of the res gesta?

HIS LORDSHIP: Yes, or something that could have been done.

MR. McCARTHY: I understand Your Lordship means a remark made by the craneman, or anything like that, on the sudden happening of an accident, may be evidence?

MR. PHELAN: This was made by Sheppard.

MR. McCARTHY: That would not necessarily be evidence. If Sheppard afterwards chooses to make some comment on the man's conduct that would not necessarily be evidence. 30

MR. PHELAN: This comment was made at the time of the accident, immediately after.

MR. McCARTHY: It must be simultaneously with the accident.

HIS LORDSHIP: That is the point I am getting at. Something that is the immediate result of the accident, I think that would be admissible.

MR. PHELAN: Simultaneously, My Lord.

MR. McCARTHY: He has not proved that yet.

MR. PHELAN: I was going to ask when the remark was made.

Q. Do not tell me for the present what remark it was. When was the remark made? A. Just as soon as the hook hit the man on the head. 40

Q. What was the remark?

MR. McCARTHY: I object. I do not think the remark of a man can be made binding on the company.

HIS LORDSHIP: Supposing the remark was made instantaneously. Supposing one man strikes another and a third person connected with him instantly shouts out to the man who strikes as a consequence of the blow?

MR. McCARTHY: Quite true, My Lord. But it is not in consequence of the accident. Your Lordship will see the difference. It is in consequence of what he thought the craneman had or had not done. He may have attributed it to something entirely different than the real reason.

MR. PHELAN: I will remove any doubts about the matter by not pressing the question. My learned friend does not want it answered.

MR. McCARTHY: It is not whether I want it answered or do not want it answered. It is a question of evidence. It is on the record. His Lordship will have to rule.

10 MR. PHELAN: I will not press it.

MR. PHELAN: Q. Was this your first experience with cranes? A. No.

Q. How many years experience have you had? A. Working with cranes I have had five years experience.

Q. With what firms have you worked? A. Clennic & Marshall, Steel Company, New York.

Q. Any one else? A. Pennsylvania Engineering Works.

Q. Any one else? A. Hydraulic Power Company and Toronto Power Company.

20 Q. Any more? A. G. M. Stewart & Company, of New York.

Q. Did any of these firms use electric hoists or travelling cranes? A. They all used electric hoists except the power house and they used electric cranes, and the Clennic & Marshall Company used electric travelling cranes.

Q. Are you familiar with the method of operating the cranes? A. I never operated a crane but I seen them operated and I know how they should be operated.

Q. How should they be operated? A. They should have a signalman to give signals to the crane operator.

30 MR. McCARTHY: Is this an expert?

MR. PHELAN: Yes.

HIS LORDSHIP: He says he knows how it should be done.

MR. PHELAN: Q. They should have a signalman. What would be the duties of the signalman? A. To give signals to the operator, and also to take instructions from the foreman as to how he wanted the work done.

Q. Who was in command of the crane, the operator or the signalman? A. Signalman is supposed to be.

Q. Who regulated the raising and lowering of the pulleys? A. The operator.

40 Q. Who did the mechanical work? A. The operator.

Q. Who dictated when and how it should be done? A. The signalman.

Q. Who watched the operation of the raising and lowering of these pulleys? A. Signalman.

Q. Did he have any other duties to perform? A. Signalman has no other duties to perform.

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Q. In the places where you worked was or was not such a man a part of the system which was employed by these companies? A. Clennie & Marshall always has a signalman. All hoisting engines and electric hoists always has a signalman. Toronto Power Company, I never seen a signalman there.

Q. Is that or is not that a recognized part of the system of operating a plant or machine of this kind? A. Yes.

Q. You mean by that it is a recognized part? A. Yes.

Q. Did they have such a man in the employment of the Toronto Power Company when Paskwan was killed? A. They had one there used to give signals once in a while, but he was mostly always working as a rigger. 10

Q. Working as what? A. Working as a signalman and working as a rigger half the time.

Q. How was he described, signalman or rigger? A. Described as a rigger, but he used to put his time in.

Q. Did the company have, or did not they have at the time of this accident as part of their system a recognized signalman? A. No.

Q. What would have been the effect or the result in this case if they had had such a man? A. If they had such a man he would have been watching the hooks and the accident would never have happened. 20

Q. How did the accident happen? A. The foreman give a signal to go up on the small hook and signal to come down on the big hook, and the hook went right up, and it blocked, and it broke the splice in the cable on the equalizing sheave, and the hook came down and hit Paskwan on the head.

Q. The two hooks were allowed to operate until such time as the small hook came in contact with the drum? A. The equalizing sheave.

Q. That is, the equalizing pulley, a pulley located in front of the drum; that is correct? A. Yes.

Q. The operator did not stop the small hook until it came in contact with the equalizing pulley—and what happened? A. Hook came down and hit Paskwan on the head, hook and sheave. 30

HIS LORDSHIP: Q. What caused it to come down? A. There was a splice in the cable on the equalizingsheave—heavy strain, continuous running of the motor broke the cable on the equalizing sheave—it had to fall down.

HIS LORDSHIP: I did not hear him say before the cable had broken.

MR. PHELAN: Yes, my Lord; broken at the splice.

MR. PHELAN: Q. What was the condition of this cable at the place which broke? A. It was spliced there.

Q. What do you know about the condition of the cable at that time? A. How I know the condition of the cable, I was sent up there the next day to tie up both ends of the cable, and the blocks and hooks had been cut off. After the accident I tied up the cable up there, and I looked at both ends where it was broke. You could naturally see where it was spliced, directly over the top of the equalizing sheave. 40

Q. Was it dangerous or not?

MR. McCARTHY: I object, my Lord. There is no such charge in the pleadings. This is something I never heard suggested before; no mention of the cable. If my learned friend gives evidence of this I will have to ask for an adjournment.

HIS LORDSHIP: You will have to adhere to the pleadings. There is nothing in the pleadings on that, Mr. Phelan.

MR. PHELAN: I did not draw the pleadings, my Lord. (After perusing pleadings) I cannot press that, my Lord. Do I understand Mr. McCarthy to say that he is not prepared for it?

10 MR. McCARTHY: I am not. I was asking the master mechanic to come in so that he could hear; it is something I never heard of.

MR. PHELAN: Perhaps we can allow it to rest for the time being until Mr. McCarthy finds out.

Q. Mr. Fraser has prepared a rough sketch of this pulley. Does that (shows) in a general way show the location of the two pulleys or sheaves and the hook? A. Only this equalizer turns the opposite way.

Q. This small object up here marked "drum." One end of the cable is fastened to the drum; where would the other end be fastened? A. Both ends of the cable fastened to the drum; runs through here (shows) to the
20 equalizer.

Exhibit 2: Rough sketch.

Q. This is what is called the equalizer here? A. Yes, this here.

Q. Is there any other way in which an accident of this kind could have been prevented? A. If they had a limit switch on the crane.

Q. Describe to the jury what a limit switch is? A. A limit switch is a worm screw on the shafting which only allows the hook to come within about 2 feet from the drum, or as near to the drum as you want to set it for.

Q. When it comes within 2 feet of the drum what happens with the limit switch? A. The hooks will start and stop going up at that point if it
30 is set for 2 feet.

Q. With this switch you can set the machinery so that the pulley will stop at any point below the drum you want to set the machinery for? A. Yes.

Q. Was there any such control or device upon the crane that was being operated by the defendants? A. No, sir.

Q. If there had been such a device in use what would have been the result in this case? A. It would have prevented that man getting killed.

Q. In what way? A. To stop the hook.

Q. Before it came up to the point where a breakage in the cable was
40 likely to result; is that correct? A. Yes, sir.

Q. How does the operator sitting in his cage control the operation of these hooks or blocks? A. Each hook has a controller separately.

Q. Separate controller; you mean by controller, lever? A. The controller is the handle on the control box. Reverse it one way brings the hook down; stop it in the center shuts the power off.

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Q. Same kind of thing you see in the motorman's vestibule on the street railway? A. Yes.

Q. If you reverse it, it goes down? A. Reverse it the other way it goes up. It is all marked, "up" and "down" and "off."

Q. Whose duty is it to operate these levers? A. The crane operator.

Q. By operating the levers is it possible to stop the hook at any point the operator wants to? A. Yes.

Q. How is that operation performed, supposing the operator wants to stop the hook at any point? A. He gets a signal.

Q. What does he do? A. Stops the crane when he gets a signal. 10

Q. What does he do? A. Moves the controller over.

Q. By simply moving the controller the operator has it within his power to stop that pulley at any point he wants to; is that it? A. Yes.

Q. If the controller had been moved in this case before the block came in contact with the equalizing sheave what would have happened? A. If it had been reversed, if he got a signal to reverse the controller, the hooks would never have went up there and got cut off.

Q. Without any signal, was there anything to prevent the operator from his cage seeing the smaller block going up? A. The limit switch is the only thing I know of. 20

MR. McCARTHY: Prevent him seeing it?

MR. PHELAN: Q. Does he command a view of the two blocks from his cage? A. Yes.

Q. Could he see the small block as it was going up? A. Yes.

Q. If he had been looking at it, what was it necessary for him to do in order to stop it coming in contact? A. If he seen it in time he could have turned the controller around to "off" and it would have stopped. If he did not see it until it was very near he could have reversed it and the hook would have started going down.

Q. Instead of that in this case the hook continued to go up until it struck the obstruction? A. Until it struck the equalizing sheave and broke off at the splice. 30

CROSS-EXAMINED by MR. McCARTHY:

Q. You are qualifying as an expert, Mr. Dion, is that it? A. An expert.

Q. You consider yourself an expert? A. About seeing cranes in operation, yes.

Q. You consider yourself an expert? A. As an expert crane runner, no.

Q. I want to get what your particular branch is; are you an expert in the installation of cranes? A. I have worked in several of them. 40

Q. I did not ask that. Listen to the questions. Are you an expert on the installation of cranes? A. Installation of cranes?

Q. Yes. A. I never installed any cranes.

Q. Have you ever assisted in preparing the specifications for the installation of a crane? A. Yes, sir, I have worked on them cranes, repairing it.

Q. Did you hear what I said; have you ever assisted in preparing the specifications? A. Not on the specifications, no, sir.

Q. Do you know anything at all about the construction of cranes? A. Yes.

Q. What do you know about it? A. I have put up iron work for cranes; put the drums in and the cable.

10 Q. You don't have to be a mechanic for that? A. You have got to be a mechanic to get up there and reave up crane blocks.

Q. An expert mechanic? A. Not an expert.

Q. First, perhaps—tell us how old you are? A. 24.

Q. How many years experience? A. Five.

Q. Since you were 20? A. Yes.

Q. Where was the first experience? A. Clennic, Marshall Steel Company.

Q. What doing? A. Structural iron work; erecting, installing hoists.

Q. What is their business? A. Structural steel work, and so on.

20 Q. Where? A. Work all over the country.

Q. Where were you? A. I was working in New York City.

Q. What doing there? A. On the docks there, putting new piers for the docks.

Q. What part of the work were you doing? A. Rigging and putting up derricks.

Q. How long were you there? A. Two and one-half years.

Q. You were there two and one-half years? A. Yes.

Q. As man engaged on iron work? A. And rigging and erecting derricks.

30 Q. Down on the docks? A. Yes.

Q. That is your first work? A. My first work in New York.

Q. After you left that shop where did you go then? A. Went to the Ontario Power Company.

Q. Ontario Power Company? A. Yes.

Q. That is on the Canadian side? A. Yes.

Q. How long were you with them? A. I worked on the transmission line with them, erecting and assembling towers.

Q. How long were you with them? A. About a year and two months; fourteen months.

40 Q. During that time you were on the erection, and assembling of the material for the towers? A. Yes sir; put them up with derricks.

Q. You were not working inside at all? A. No.

Q. Building towers at that time? A. Yes.

Q. You were assisting in the building of the towers? A. Yes, sir.

Q. After leaving the Ontario Power Company where did you go then? A. Over to the Hydraulic Power Company.

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- Q. Where is that? A. Niagara Falls, New York.
- Q. How long were you with them? A. I was with them a year and a half.
- Q. What work were you doing for them? A. Working for Dick Crowley, rigging, installing machines and everything like that.
- Q. Inside or outside? A. Inside the power house.
- Q. You were with them how long? A. Year and a half.
- Q. After leaving them where? A. I went to work for J. M. Stewart and Company; went back to New York.
- Q. Where? A. New York City. 10
- Q. In what capacity did you go in? A. Same as always, rigging and iron working.
- Q. What is their business? A. Structural steel work, rigging.
- Q. That is what we commonly see in these big buildings; you were engaged in that? A. Yes; rigging is putting in machinery and everything like that.
- Q. How long were you with the Stewart Company? A. About five months.
- Q. That is in New York; then where did you go? A. I came to the Toronto Power Company. 20
- Q. You were with them how long? A. Well, from the time I went there—
- Q. When did you go to them? A. I think I would have been there two years this September if I stayed, but I left in April.
- Q. You commenced working with them a year ago last September, did you, the Toronto Power Company? A. A year ago last September; I would have been with them two years if I stayed until this September.
- Q. It would be two years this September if you had stayed with them? A. Yes.
- Q. You say you met with an accident, when? A. On the 5th day of 30 March, I think it was, or April; either one of them two months.
- Q. I believe you have an action pending against the company? A. What is that?
- Q. You have an action now against the company? A. Yes, sir.
- Q. You are suing the company? A. Yes sir.
- Q. You have also taken a great interest in this action? A. I was right there when this fellow got killed.
- Q. You have been taking a great interest in this action? A. Because I was subpoenaed.
- Q. Before you were ever subpoenaed? A. No. 40
- Q. Mr. Fraser is acting for you, is not he? A. What is that?
- Q. Is your hearing bad? A. My hearing is bad since I got hurt; you will have to speak loud, please.
- Q. Mr. Fraser is acting for you? A. Acting for me against the company?

- Q. Yes. A. Yes.
- Q. You gave him the information on which this action was brought?
- A. No sir, I didn't.
- Q. You did not? A. No.
- Q. Never told him anything? A. Not concerning this action.
- Q. I was very much struck by my learned friend's opening to the jury and your story; they seem to be the same thing.
- MR. PHELAN: I had it all this morning.
- MR. MCCARTHY: Q. And the pleadings, as well. Perhaps my learned
10 friend did not notice the similarity. Have you ever been engaged in civil engineering? A. No sir.
- Q. Ever passed any examination of any kind whatsoever in regard to engineering works? A. No sir.
- Q. Taking the different places you were at: What sort of cranes or devices did they have at the Clennie, Marshall Company? A. Electrical crane, what they call a travelling crane.
- Q. For what purpose? A. Lifting steel and placing steel.
- Q. Travelling crane; is that one of those things with a big boom?
- A. No, that is a derrick; I said a crane.
- 20 Q. They have a travelling crane? A. Yes.
- Q. Which they use in the erection of buildings? A. Yes.
- Q. What weight is that? A. They had a 50-ton crane on the pier in New York.
- Q. On the New York pier? A. Yes.
- Q. How many hooks on that? A. Operated four hooks.
- Q. Four hooks? A. Two hooks.
- Q. Do you mean two or four? A. Two. Four drums, I mean.
- Q. Operated with two hooks? A. Yes, sir.
- Q. Both the same size? A. No, sir, different capacities.
- 30 Q. How operated? A. Electric controllers and crane operator.
- Q. In the same way as the crane of the Toronto Power Company? A. Only the cab on that crane travels with the hooks, the cab travels back and forth.
- Q. The cab travelled with the hooks? A. Yes, sir, travels the same as the carriage did, back and forth this way.
- Q. Crosswise as well as lengthwise? A. Yes, sir,
- Q. And the other company you mentioned, the Hydraulic Power Company? A. They got an electric crane.
- Q. They have an electric crane? A. Big 100-ton crane.
- 40 Q. Where? A. In the power-house.
- Q. At—? A. Niagara Falls, New York.
- Q. Operated how? A. By electricity.
- Q. What work were you doing with the crane there? A. Rigging.
- Q. Were you the rigger there? A. There was other riggers besides

me.

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—continued

Q. You were one of the riggers? A. Yes.

Q. Did that crane operate one or two hooks? A. Two hooks on that crane.

Q. Operating in the forebay in the same way? A. This crane isn't in the forebay.

Q. Where is it? A. On the main floor of the power-house.

Q. Going down to the pits? A. There are no pits in the Hydraulic.

Q. It is operated in the same way a man in a cage? A. Yes.

Q. Crane running up and down? A. Yes.

Q. Same with the Ontario Power Company; how did they operate their cranes? A. I never worked at the power-house of the Ontario Power Company. 10

Q. You were outside, and you do not know anything about the Ontario Power Company. Outside of the Hydraulic Power Company had you ever worked in any other power-house except the Toronto Power house? A. Yes, worked in the Niagara Falls Power Company.

Q. In Niagara Falls? A. Yes.

Q. That is the American branch of the Canadian Niagara? A. Yes, sir.

Q. You worked there how long? A. I never did any rigging there, but I seen the cranes there. 20

Q. You worked there how long? A. About four weeks.

Q. In what capacity? A. I was working with Fritz Anderson; he is the electrical superintendent.

Q. What work were you doing? A. Just helping the electricians over there; couldn't do anything else.

Q. When was this? A. Couldn't get a job at my work then. This is about 6 weeks ago, I guess.

Q. You have been working over there the last 6 weeks? A. Yes, sir.

Q. Over at the Niagara Falls Power Company? A. Yes. 30

Q. You have been working as electrician? A. Electrician's helper; I ain't no electrician.

Q. You didn't work on the cranes over there? A. No, sir; I didn't touch the cranes over there.

Q. Do you know how their cranes work? A. I seen them; I didn't operate them. They have got two hooks on, practically the same as any other crane.

Q. How do they compare with the crane on the Toronto Power Company? A. That I can't say, because I wasn't up to look.

Q. I thought you were? A. I seen them, but never was up and looked at them. I don't know whether they have safety blocks on or not. 40

Q. You don't know whether they have safety blocks on or not? A. No, sir.

Q. Where did you first see the safety devices you speak of? A. Got them over at the Hydraulic Power Company, and got them in New York.

Q. What are these safety blocks? A. It is a worm screw on the shaft, some of them are.

Q. On what shaft is the worm screw? A. It is on the shaft of the drum. When the hook comes up so far this kicks itself out. Screw catches and kicks the brake out and stops the drum from going up any further.

Q. That is the only kind you have ever seen? A. There is another, safety switch they call it.

Q. Where is that; whereabouts did you see that? A. I never seen that; I am just explaining the one I seen.

10 Q. I am asking what you have seen? A. I told you.

Q. You have never seen the safety switch you speak of? A. I have seen the worm screw.

Q. You told me that? A. That is the limit switch.

Q. The other switch you have never seen? A. There is a thousand different kinds I have never seen; lots of different kinds.

Q. That is the only one you have ever seen in operation? A. Yes, sir.

Q. What they call the limit switch? A. Yes.

Q. Getting back to the position of affairs at the Toronto Power Company. How high are the rails or the wheels on which the crane operates?

20 A. About 35 or 40 feet. I never measured it; I should judge that.

Q. Wheel on the right hand side and wheel on the left hand side; there are tracks? A. On each side.

Q. On which the crane runs? A. Yes.

Q. If we are dealing with the wall next the river the cage would be hanging down from the crane—? A. Yes, on the river side.

Q. Hanging down from the crane? A. Yes.

Q. On a line with the two hooks? A. Directly parallel with them.

Q. The hooks and the craneman are all in a line? A. Yes.

Q. The cage is right up underneath the rail, underneath the crane? A. 30 Right in between the girders.

Q. What were you doing just before the accident to Paskwan? A. Just before the accident?

Q. Yes. A. We were all sent out to get rid—

Q. What were you doing? A. I was working on—

Q. Where? A. On the stop logs

Q. That is the time you were working on the stop logs? A. Yes, sir.

Q. How long had you been working on the stop logs before the accident? A. On them stop logs—probably took up three parts of an hour to get the cable around so that we could get the cable under it.

40 Q. Paskwan working with you? A. Working on the stop logs; not with me alone.

Q. You were there? A. He was working there.

Q. You and Paskwan and others were putting the cable around the stop logs? A. Yes.

Q. In the meantime where was the crane? A. The crane was down-

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—continued

stream, you would call that, because the water runs down. The crane was down there, using it to pull racks out of the forebay.

Q. Downstream? A. Yes.

Q. Down at the other end of the building, anyway? A. Yes.

Q. As soon as you got your cables around the stop logs you say that Sheppard, the foreman, gave instructions to bring the crane up? A. Yes.

Q. Did you see the crane at all when it was down lifting these ice racks? A. Nobody could see it.

Q. I did not ask that. Answer the question. Did you, or did you not, see it? A. I seen the crane there; I knew they were lifting ice racks with it. 10

Q. Just before Sheppard gave instructions to come up to where you were did you see the position of the hooks? A. The position of the hooks?

Q. Did you see the position of the hooks or not? A. Yes.

Q. What was the position of the hooks when the crane was down lifting the ice racks? A. The small hook was about twelve or fifteen feet from the concrete floor.

Q. About twelve or fifteen feet from the concrete floor? A. Yes, sir, and the big hook was away up pretty near to the drum.

Q. Pretty near to the drum? A. Probably four or five feet from the drum. I didn't get up there to measure it. 20

Q. That is the position of the hooks, or pulleys, or sheaves—whatever you want to call them—when Sheppard gave instructions—? A. —To bring the crane up to where we were working.

Q. Did you see the crane as it came up? A. Yes, sir, I seen the crane coming up.

Q. Did the position of the hooks alter at all while the crane was coming up? A. No.

Q. So that the crane came up from down below, the other end of the building, with the small hook about fifteen feet from the concrete floor? A. 30
Twelve feet.

Q. Twelve or fifteen feet above the concrete floor, and I think you said the big hook was up near the drum? A. Yes.

Q. And the crane came along slowly in that way? A. It come along; I don't know if it come slowly or fast.

Q. You saw it? A. It came along there —

Q. Did it come slow or fast? A. I don't know.

Q. At any rate, when it got opposite to where you were, where the stop logs were, it stopped? A. When he got right over the top of where the stop logs was and the sling was the crane stopped. 40

Q. Why did it stop? A. I suppose—

Q. Do you know? A. Because we wanted to lift them logs.

Q. How did he know that? A. Some one must have told him so, I guess.

Q. Don't guess; you are on oath just now? A. I know.

Q. You know it, do you? A. Yes, sir.

Q. At any rate the crane stopped opposite the stop logs, and the hooks were in the same position as when you saw them last? A. Yes, sir.

Q. What was the first thing that happened when the crane stopped? A. Sheppard give the signal to go up on the small hook and come down on the big hook.

Q. Where was Sheppard when he gave that signal? A. Right at the stop logs.

Q. What was the first signal he gave? A. Gave the signal to go up on the small hook.

10 Q. What was that signal? A. (Witness illustrates).

Q. Not by word of mouth? A. Take it up, he says.

Q. Did he say anything? A. I couldn't say whether he says, Take it up with the small hook; he gave the signal to go up with the small hook.

Q. You saw that? A. Yes, sir.

Q. You saw the signal like that (shows)? A. Yes, sir.

Q. Means what? A. Go up.

Q. With which? A. Small hook.

Q. Does that mean go up with the small hook? A. I said he said, Go up with the small hook.

20 Q. You said just now you did not know whether he said anything or not. He gave the signal. Which is true? A. Go up on the small hook.

Q. You swear he said that? A. Yes.

Q. Just now you said you didn't hear him say anything; which is true? A. Go up on the small hook.

Q. What you said before is not true, that you did not hear him say anything? A. Go up on the small hook—is true.

Q. When you said you didn't hear him say anything you said what was not true; is that it? A. Go up on the small hook.

30 Q. Perhaps you will answer the question. When you told me just now you didn't hear him say anything you said what was not true, because you did hear him say something? A. I seen him go with his hand like that (shows), Go up with the small hook.

Q. Did you hear him say that? A. I must have or I wouldn't say it.

Q. Just now you said you didn't hear him say anything. You say when you saw him moving his hand you heard him say, Go up with the small hook? A. Yes.

Q. You want to say now you heard him say that? A. Yes.

Q. You saw him give the signal at the same time? A. Yes.

40 Q. What did the craneman do? A. The craneman started the small hook up, and the big hook down.

Q. Wait a moment; he started the small hook up? A. Yes.

Q. How far did the small hook go? A. It went up—

Q. Did you keep your eye on it? A. I was working; I couldn't keep my eye on it to see how far it went; I know it went up.

Q. What were you doing at the time? A. Knocking ice off the stop logs.

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Q. What position were you in? A. Turned like this (shows), knocking the ice off.

Q. Where was the crane in regard to you? A. Right over there (shows).

Q. You were in a position knocking the ice to see the signals at the same time? A. You could hear him. He called the crane down.

Q. I am asking if you could see them? A. See the signals?

Q. Yes. A. Certainly, I seen them.

Q. Alright; you can answer the questions, Yes or No. You could see the signals while you were knocking off the ice? A. Certainly, I could. 10

Q. Sheppard was standing where? A. Standing right there on the stop logs.

Q. What direction from you? A. Walking all round the stop logs.

Q. Walking all around the stop logs? A. Sure; he was only about 15—

Q. And you were hammering ice on the stop logs? A. Yes.

Q. You could hear him say what? A. Take up on the small hooks.

Q. And the small hook was then, you say, 12 or 15 feet above the concrete; is that true? A. Yes.

Q. Did you stop work to see the small hook go up? A. No, I was 20 working.

Q. You never saw the small hook go up at all? A. I seen the small hook go up.

Q. Did you see the small hook going up at all? A. Certainly.

Q. Saw it all the time? A. Not all the time, no, sir.

Q. You said just now you could not see it when you were working; which is true? A. I didn't see it all the time; I seen it going up. I seen him give the signal.

Q. You told us that. I am asking if you saw the small hook go up in answer to the signal? A. I seen it start up, but I never watched it all the 30 way up.

Q. How fast was it travelling? A. About twice as fast as the big hook.

Q. The little one? A. Yes, sir.

Q. Pledge your oath to that? A. The small hook travels faster than the big one, pretty near twice as fast.

Q. Pledge your oath to that? A. Yes.

Q. How fast does the big one travel? A. I don't know now just how fast. I know the small hook travels pretty near twice as fast as the big hook. I don't know how fast. 40

Q. How fast does the big one travel? A. I don't know just how fast they do travel.

Q. Give me some idea; you have seen it? A. I seen it go up. It takes probably two or three minutes for the small hook to go up from the floor to the drum.

Q. Two or three minutes to go from the floor up to the drum? A. Yes. RECORD.

Q. That is 35 feet? A. Yes.

Q. Takes two or three minutes for the small hook to go 35 feet. It would take 5 or 6 minutes for the big hook to go the same distance if the small hook travels twice as fast as the big hook? A. I guess it would. The small hook travels pretty near twice as fast as the big one.

Q. You saw the small hook start; then what was the next thing? A. Sheppard gave the crane runner the signal to send down the big hook.

10 Q. How long after? A. Why, I don't think it was much more than a few seconds afterwards.

Q. Two seconds? A. A few seconds.

Q. How many? A. I don't know; I didn't have a watch there.

Q. No idea at all? A. I said a few seconds; probably three or four seconds.

Q. Those two signals, I presume, would indicate to the man in the cage that Sheppard wanted to use the big hook, and not the small one? A. Yes.

Q. Seeing the two signals which you have given us, the man who was operating would naturally first raise his small hook and then lower his big one? A. Yes.

Q. Both these hooks, as you have told us, are right in his line of vision? A. Yes.

Q. Both operated by separate machinery? A. Separate controllers.

Q. So that he could shut off his power as to the small hook, and stop the small hook in any position he saw fit? A. Yes.

Q. Sheppard would not have anything to do with how far the small hook should go? A. Sheppard was giving the signals.

Q. Sheppard would not have anything to do with how far the small hook should go? A. He gave the signals.

30 Q. Answer the question. Sheppard wouldn't have anything to do with how far the small hook should go? A. That is his place to stop it when he wants to; he knew when it was clear of the other hook.

Q. Do you mean to tell us or tell any sensible person the man in the cage would not stop the small hook when he got it to the place he wanted it? A. When a man is giving signals—

Q. Answer the question?

MR. PHELAN: He is answering.

MR. MCCARTHY: No; he is quite clearly showing his bias.

40 Q. When the man in the crane is given the signal to indicate that they want to use the big hook instead of the small hook, is it not left to the man in the cage to say how far he will take the small hook up? A. He ought to know how far to take it up, if he is given the signal to stop.

Q. Without being given the signal to stop? A. Oh, I don't know; I never ran the crane. If I was running the crane I would have run it up

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as far as he wanted. He didn't know whether he wanted him to use the small hook or not.

Q. You told us the signals Sheppard gave indicated he wanted the man in the cage to use the big hook and not the small hook? A. Certainly.

Q. Therefore the man in the cage would move the small hook out of the way of the big hook? A. He took the small hook up; I don't know what he took it up for.

Q. That is the experience you have gained in five years' experience with crane people. This is the evidence on which you pose as an expert, is it? (No answer). 10

Q. Is this the evidence on which you pose as an expert? A. That is the evidence.

Q. Did you see him lower the big hook? A. I seen the big hook come down.

Q. Did you see it start? A. Yes.

Q. Did you watch it as it came down? A. I watched it but I didn't see it come all the way down; I seen it coming down.

Q. You saw it coming down but you did not see it all the way down; is that it? A. Yes.

Q. It took 6 minutes to come down? A. That big hook travels very 20 slow.

Q. It took about 6 minutes to come down? A. I should judge 5 or 6 minutes; I never timed it.

Q. It was right up to the top of the drum? A. Yes.

Q. So that there was no danger to any one for five or six minutes anyway? A. There was danger to the men putting on the sling there.

Q. When it got near them. It took five or six minutes to get there? A. The hook was swaying.

Q. It took five or six minutes to get to where the men were? A. Yes.

Q. During that time was there anything to prevent the man in the 30 cage turning off the power and stopping the small hook as it went up? A. The only thing I know to prevent him, he had his eyes off the hook momentarily.

Q. Momentarily? It takes five or six minutes for the big hook to come down? A. I thought you were referring to the small hook.

Q. It takes five minutes for the big hook to come down? A. Yes sir.

Q. During that five minutes the other hook is going up? A. Yes.

Q. There would be no danger from the big hook until it got near to where the men were sitting, would there? A. They were sitting right 40 over the top of the forebay.

Q. There would be no danger until the big hook got near them? A. Not unless they were afraid the hook was going to sway.

Q. The hook would not hit them until it got down to them; the hook could not hit them until it got down to them? A. No sir.

Q. It took five minutes to get there; is that so? A. Takes about four or five minutes, I should judge.

Q. You are getting it shorter? A. Five or six minutes; I never timed it exactly.

Q. Takes five or six minutes to get there, and during that time the man could at any moment have looked at his small hook and closed off the power, could not he? A. Looked at the small hook and closed the power off.

10 Q. While the big hook was coming down? A. I should judge he could.

Q. The hooks had to pass right in front of him as he sat there? A. Yes.

Q. The little hook when it got to where you were was 12 or 15 feet above the concrete walk? A. Yes.

Q. How high would it have to be taken to get it right out of the way? A. How high?

20 Q. How high would he have to take it to get it out of the way for using the big hook? A. Some times the crane operators—all depends who uses it. To clear where we were working I should judge 10 or 12 feet would give us lots of room.

Q. So that if he raised the small hook another five or ten feet it would be right out of the way, wouldn't it? A. It would have been right out of the way.

Q. Out of the way of operating the big hook? A. No, it would have to go up higher than that.

Q. How much higher would it have to go? A. So that we could get them stop logs through the door. We have to pass them stop logs through the door upright. The small hook would have to go up a good deal further.

30 Q. Have to go up further than 20 feet? A. Couldn't very well go up 20 feet more when there is only 35 feet.

Q. You said 35 feet. How close would it have to go to the drum, the small hook? A. Probably 5 or 6 feet from the drum.

Q. How far was it from the drum when it started? A. It was 12 feet from the ground.

Q. You put the other at 35 feet. It had to go up five feet from the drum; that is the way you put it? A. It had to be about five or six feet from the drum.

40 Q. Can you suggest anything that would prevent the man in the cage from watching the small hook as it went up? The big hook had twice the distance to go—travelled twice as slowly. What was there to prevent the man in the cage from observing the small hook as it went up and shutting it off at the proper place? A. The only thing I know he was depending on the man giving signals.

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Q. Did you ever know him depend on the man giving signals before?
A. Most assuredly; I give signals myself.

Q. What for? A. If there was no signalman there.

Q. To tell him where to stop? A. When he was lifting logs.

Q. When he is taking the small hook out of the way is not it left to his judgment to put it where he wants to? A. He can do that if he wants to.

Q. Did you ever interfere with him when he was adjusting the small hook when he was not carrying a load? A. Not me; the signalman does.

Q. Tell me who you saw doing it? A. Clifford Murray, the signal- 10
man working there.

Q. Clifford Murray? A. Yes.

Q. You have seen him when the small hook goes out of business tell the man in the cage where to put it and how to put it? A. When he was through using it he would tell him to take it up and stop it.

Q. Certainly. A. And when to stop it.

Q. When to stop it? A. Yes.

Q. When to stop it—4, 5 or 3 feet from the ground? A. And he would watch the hook until it got up so high and then give the crane operator the signal when to stop. 20

Q. When it was carrying nothing? A. Yes.

Q. When he wanted to put it out of the way? A. Yes.

Q. It was not left to the man in the cage? A. Clifford Murray gave the signal to stop it. Other signalmen always do, too.

Q. That is your idea? A. That is everybody's idea around construction work.

Q. Perhaps there are some people here who know as much about it as you do? A. Probably they know more.

Q. I should think so; I hope so, anyway.

MR. PHELAN: That is not a nice thing to say. 30

MR. MCCARTHY: Q. You worked in the Niagara Falls Power Company; did you ever see the operation of the cranes there? A. I told you that once. No, I never was up in the cranes.

Q. Did you ever see them operate the cranes in any other electrical house? A. Hydraulic Power Company.

Q. Over the forebay? A. In that house over the forebay?

Q. Yes. A. Only the Toronto I seen in the forebay.

Q. That is the only house in which you have had any experience?
A. In the forebay, yes.

EARL CATTLEY, Sworn. Examined by MR. PHELAN: 40

Q. What is your experience? A. Electrical worker.

Q. How many years experience? A. Apprenticeship, two and a half years.

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tion.

Q. After that? A. Five and a half years United States Govern-
ment.

Q. Where five and a half years? A. United States Government.

Q. After that? A. One year various places.

Q. Last February what were you doing? A. Working on the Tor-
onto Power House.

Q. In what capacity? A. Rigger.

Q. I believe you had applied for employment as an electrician and
could not get it? A. Yes.

10 Q. So you took a job working as rigger? A. Yes.

Q. Were you at the Power Company the day Paskwan was killed?
A. Yes.

Q. Working with Paskwan's gang? A. I was.

Q. Will you just describe briefly to the jury how the travelling crane
operated? A. How it is operated?

Q. Yes, just describe it? A. The main truss work of the crane rails
across the forebay, one end to the other—

Q. That is a distance of how much? A. I should judge about fifty
feet. That part the crane travels up and down over the forebay—

20 Q. A distance of how much, what distance? A. Well, I don't know
just what the length of the building is. I should say about 200 feet—what-
ever the length of the building is.

Q. It travels up and down on the tracks and is equipped with how
many lifts? A. Two.

Q. Operated how? A. Electrically.

Q. By whom? A. The operator.

Q. Sitting where? A. In the cage.

Q. That cage is located where? A. On the river side of the crane,
hanging under one of the girders.

30 Q. The crane moves up and down the forebay, and I suppose there
is a controller for that and a controller for each of the lifts? A. Each of
the lifts.

Q. Is there any other controller? A. One controller for the carriage.

Q. To shift the carriage across the crane? A. Across the crane,
back and forward.

Q. From one side of the forebay to the other. Did you know the man
who was operating the crane? A. I did.

Q. What kind of fellow was he, how old a fellow? A. A young fel-
low, I should say about 21 or 22.

40 Q. On the day of this accident what was the crane doing before the
accident? A. How long before?

Q. Within say 15 or 20 minutes before? A. Pulling ice racks.

Q. How far down the forebay from where the accident happened?
A. About 75 feet.

Q. What hook were they using for that purpose? A. The small hook.

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Q. The carriage had been shifted over until the small hook was directly over the ice rack? A. Yes.

Q. Where would that bring the larger hook? A. That would bring the larger hook about five feet out over the forebay wall and directly over the forebay, over the water.

Q. It would bring the large hook about five feet over towards the river side? A. Yes.

Q. And directly over the channel? A. Yes.

Q. Prior to the day of the accident I understand certain stop logs had been lifted from the channel; is that correct? A. They had been removed some time previous to that. 10

Q. You don't know just how long? A. May have been a week previous.

Q. Where were those stop logs? A. Placed on the forebay wall.

Q. On the forebay what? A. Forebay wall.

Q. That is what we have been calling the forebay platform? A. Yes sir.

Q. How wide is this forebay platform? A. It varies in width. In some places where the head gates come it is only about 7 feet, and in between the head frames it is about 12 feet, I should say. 20

Q. It is a concrete platform extending out from the main wall, 7 feet in some places and 12 feet in other places? A. Yes.

Q. That concrete platform is how high above the water in the channel? A. About 7 feet.

Q. So that we have the channel of water down here (Ex. 1), the concrete wall coming up about 7 feet and extending over to the main wall for another 7 feet or 12 feet? A. Yes.

Q. You say that those stop logs were raised on this forebay floor, concrete flooring? A. Yes.

Q. I have drawn a rough sketch (exhibit 1), I have shown this by another witness. Does that indicate in a general way the situation—main building here, main wall here, stop logs raised on the forebay platform, two I-beams across the channel? A. That represents it. 30

Q. What was placed on the I-beams? A. A plank.

Q. On the plank? A. Two men.

Q. What were those men doing? A. Sitting holding the hitch waiting to put it in the hook.

Q. What did that hitch enclose? A. Enclosed the stop logs.

Q. That is, a sling had been put around the stop logs and one end of the sling shoved through the other end? A. Yes. 40

Q. And the men were holding the loop on the other end. How was the work performed of removing the logs; what would happen? A. What would happen?

Q. How would the work of removing the logs to some place else be accomplished? A. We would lower one hook down, whichever hook we

wanted, and the hook would be placed in the disengaged eye of the sling.

Q. What were the two men to do on the boards? A. Hold the hitch and put it on the hook.

Q. As the pulley went up it tightened the sling around the logs. What was Paskwan doing? A. Paskwan was helping to put the hitch on. After we had the hitch on we were waiting for the crane.

Q. I think you told me the crane was 75 feet down the forebay? A. Yes, about that.

10 Q. What occurred at that point? A. As far as I know they were pulling the ice racks down there. We were in a hurry for the crane, and the foreman hollered for the craneman to bring his crane up.

Q. Who was the foreman? A. Sheppard.

Q. The crane came up? A. Yes.

Q. What position were the blocks in as the crane came up? A. The little hook was down.

Q. How far? A. The carriage was out over the forebay, and I should say the little hook was down about five feet from the level of the platform.

Q. And the big hook was where? A. Up in its place, about five feet or four feet—something like that—from the carriage.

20 Q. Did any person indicate where the crane was to stop when it moved back? A. Yes.

Q. Who? A. The craneman knew where we were lifting for one thing, and the boss rigger, Mr. Sheppard, indicated where it was to stop.

Q. Did it stop? A. It did.

Q. What occurred at that moment? A. The craneman ran his carriage over to bring his little hook in line with the lift.

Q. What do you mean? A. Ran his carriage across the forebay towards the main wall.

30 Q. Shifted the carriage over towards the main wall, so as to bring the big hook over the stop logs? A. The little hook first.

Q. And then the big hook? A. That is after he was told to take his little hook away.

Q. How far over did he run the carriage? A. The little hook was out over the forebay enough to clear anybody walking along.

Q. How far over was the carriage moved? A. The carriage might have been moved three or four feet.

Q. Did Mr. Sheppard do anything else? A. He give the signal to take up his little hook and send down the big one.

Q. How was that signal indicated? A. By hands.

40 Q. Did you hear any verbal direction? A. I heard him say, Take up your little hook and send down the big one.

Q. Were those instructions given at the same time or different times? A. Given at the same time.

Q. What did Sheppard do when he gave that direction? A. Mr. Sheppard turned around and started knocking some ice off the stop logs shortly afterwards.

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Q. Did you see the operation of the raising of the small hook and lowering the big one commence? A. Only in a general view. I know the little hook went up and the big one started to come down.

Q. How soon after Mr. Sheppard gave the signal did he turn away?
A. I should say half a minute.

Q. At the time he turned away were the hooks in motion? A. Yes.

Q. From the time he turned until the accident happened was he in a position to command a view of the hooks? A. I don't think so.

Q. You say Mr. Sheppard turned away and the two pulleys were then in motion. Did you watch the blocks after that? A. No sir. 10

Q. What was the next thing you heard or saw? A. The next thing I heard or saw, I stepped back to step away from the lift as there were five men there.

Q. Stepped away from the stop logs? A. I went to step back and I stepped into Mr. Paskwan. I turned around and looked at him and started to walk off, and I had taken about one step and I heard something crack just like a rifle shot; I looked up in the air like that and I saw the hooks were about 8 or 10 feet—

Q. Which hook? A. The little hook.

Q. 8 or 10 feet from what? A. The carriage. 20

Q. Doing what? A. Coming down. There were two ends of the cable, I should say about four feet, hanging even.

Q. Indicating what? A. Indicating it broke somewheres near the center of the cable.

Q. You looked up and the small hook was coming down—descended on Paskwan's head I believe? A. It all happened pretty fast.

Q. What was it hit Paskwan? A. The up-river sheave.

Q. The small sheave, or the small pulley, as we have been calling it?
A. Yes.

Q. When you noticed the small hook falling through the air did you notice the location of the big hook? A. I can't say I did; anyway I don't remember the big hook. 30

Q. Did you notice its position or what it was doing any time before the accident happened? A. I know the big hook was swinging when it first started down.

Q. By swinging you mean swaying? A. From the crane running up and stopping suddenly.

Q. Swaying in a direction parallel with the length of the channel?
A. With the river.

Q. Swaying up and down the river. A. Yes. 40

Q. How far away was the deceased from you when he was struck?

A. Two and a half feet—two feet.

Q. Did you see any movement on his part just before he was struck?
A. Yes.

Q. What did he do? A. Had his arm up, threw his arm up like that (shows) tried to duck his head out of the way.

Q. It struck him and you helped to carry him into the office. Was that the first experience you had in connection with the use or operation of cranes? A. No.

Q. Where have you had other experience with them? A. Well, there is two kinds of cranes. I had one experience with a crane at the Aluminum plant, Niagara Falls, New York.

Q. Was that a travelling crane? A. Yes.

10 Q. An electrical crane? A. Yes.

Q. How many pulleys? A. I don't remember. That is a good many years ago; I have forgotten.

Q. Have you had any experience with any crane since then? A. No, sir.

Q. In electrical cranes of any kind? A. I did run one of them cranes, both of them, at the Toronto Power House off and on for a little while.

Q. That is where the accident happened? A. Yes.

Q. Do you as an electrician know about the method of controlling these cranes? A. Yes.

20 Q. Are there any devices by which the blocks can be stopped? A. Yes.

Q. Tell the jury what these devices are and how they operate? A. There are two or three electrical devices for tripping out your circuit breaker, and others for opening your circuit, such as on the end of your drum you have a worm on there, which is a long piece of steel regulated the same number of turns as the drum. One turn of the drum completes one turn of the rod. On that rod there is a travelling gear. When your drum has made so many revolutions it brings the hooks within three feet of your carriage; this block on your travelling worm here will have reached such a point it will have formed contacts with two brass studs, and that will cause the circuit to break, operating the oil switch on the shaft control; it will operate your switch automatically, opening it and cutting off your supply of what we commonly call juice on the crane.

30 Q. The result of that is what on the block? A. Everything stops dead.

Q. That is one device. Are there any other devices? A. I saw a different device to that on an electrical hoist; it was on a tunnel job, running two carriages up and down.

40 Q. An operation something similar to the operation of this crane? A. It would be similar, yes.

Q. What was the device or control that was used in that case? A. When the carriage or cage went up so high, after it hit the last level of the cage house, after it travelled up to the head frame so high, it would hit an arm sticking out; on the other end of the arm there would be a piece of copper, and closed the circuit, connected with a coil of the circuit breaker.

Q. The result would be—? A. Everything stops.

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Q. Would there be any difficulty, mechanically or otherwise, equipping the defendants' crane with either one of these two appliances? A. It would take some little work; it would take some machinists' work, but once the appliances are ready it would not be a hard job to fit them.

Q. It would not be a hard job to fit them? A. I don't think so.

Q. Is there anything in the construction or operation of this particular crane that would make it impossible or impracticable to put on a device of that kind? A. From the appearance of that crane and the appearance of the crane the place I am working at now, I should say there would be no trouble at all. 10

Q. Where you are working now are there such devices on the crane? A. Yes.

Q. Which one of the two you mentioned? A. Which one?

Q. Which one of the two you have described? A. The limit switch with the worm screw.

Q. Just for the sake of certainty, was there any device of that nature or kind supplied by the defendant company on their crane? A. Not that I know of.

Q. Did you have any opportunity of examining the crane? A. Only the short while I was running it. 20

Q. While you were running it did you observe there were any such appliances of that kind on or off the crane? A. I never saw it.

Q. In running it, if there were any such appliance you would have found it? A. Yes.

Q. If there had been such appliances could this accident have happened? A. In my opinion it could have been prevented.

Q. How? A. Them limit switches I know never fail to work; the Government uses them extensively.

Q. The Government uses them? A. Used extensively; different automatic controls—they are used on automatic hoists. 30

Q. In your experience with cranes, is there anything else that might be used, not in the way of mechanical equipment, but as part of the system, that would have prevented an accident of this kind? A. Not a mechanical device?

Q. No, not in the way of a mechanical device? A. Not unless it is a signalman.

Q. What is the custom with reference to the use of a signalman? A. The signalman is supposed to watch the hooks when there is a load on or you are going to make a lift, with the exception whenever you cut loose a hook, as soon as a hook is cut loose off the load it is in the hands of the operator, unless he is using another hook. 40

Q. If he is using two hooks at the same time, in whose control is the operation? A. It would be in control of the signalman.

Q. Has the signalman any other duties to perform than watching the operation of these hooks? A. He has to watch the operation of the crane,

and the hooks; he has to watch whatever he is lifting or whoever is giving him signals.

Q. Whoever is foreman in charge of the work gives him the signals?

A. Yes.

Q. The duty is upon his shoulders to see that the signals are carried out? A. Yes.

Q. Has he any other duties to perform except those of a signalman?

A. No.

Q. So that he may devote his whole time and concentrate—

10 MR. MCCARTHY: That is argument.

MR. PHELAN: Perhaps it is.

Q. Had there been a signalman in charge of this operation, had there been a signalman supplied by the defendant company, who would be in charge of the operation at the time Paskwan was killed, the signalman or the operator? A. The foreman would be if he was there—the whole job—the responsibility would be up to the signalman.

20 Q. I don't think you understand the question. If there had been a signalman there at the time the order was given to raise the one block and lower the other, in whose control would the operation have been, in the control of the signalman or the control of the operator? A. You mean who had control of the hooks, sending them up and bringing them down?

Q. Yes. A. The crane operator would have to watch the signalman for signals.

Q. Who would give the signals when and where to stop? A. The signalman.

Q. Both the hook coming down and the hook going up? A. Yes.

30 Q. Was there any such person supplied as part of the defendants' system as this signalman? A. There was a young fellow supposed to be giving signals, but there is three cranes there; when they are using more than one crane if he is not on one he is on the other.

Q. What was he doing that time? A. Doing work around there, but they are generally using him pretty nearly all the time.

Q. What other work? A. Of course there was a crane in operation pretty nearly every minute of the day.

Q. What is the practice in reference to the signalman where there is more than one crane being operated by the company? A. As I understand it, wherever there is a hoist or crane in motion unless the foreman is there they supply a signalman.

Q. For each crane? A. Yes.

40 HIS LORDSHIP: Q. This man that was directing either two or three of these cranes, was he present on the ground at this time? A. No sir, he was inside the main floor.

MR. PHELAN: Q. Did this man perform other duties besides those of signalman? A. Lots of times he did.

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Q. What? A. Well, lots of times we would have work to do that would not require a signalmen and he would be used on the block and tackle.

Q. Doing the ordinary work of a rigger? A. Yes.

Q. In the places where a signalmen would be employed, would he have other duties to perform or would his whole duty consist of watching and giving signals, where they employ a regular signalmen, or does he have other duties to perform? A. As I understand it, all they have to do is throw signals.

Q. If there had been such a man here would this accident—

10

MR. MCCARTHY: I object.

HIS LORDSHIP: That is a deduction.

MR. PHELAN: Q. If there had been such a man here what would his duty have been as the small pulley was going up? A. It would be his duty to watch where the hooks was going.

Q. If he saw there was any danger of it coming in contact with the upper sheave, what would have been his duty? A. To stop it.

Q. In what way? A. By a signal or hollering.

Q. How much wages were you getting? A. \$3.00 a day.

Q. Deceased was doing the same class of work you were doing? A. 20
Yes sir.

CROSS-EXAMINED by MR. MCCARTHY:

Q. How old are you, Mr. Cattley? A. 25 last April.

Q. How many years experience? A. In what?

Q. In the work you were doing when you were at the Toronto Power Company? A. From about November 17th to June 28th.

Q. Prior to that what class of work were you engaged in? A. Electrical work.

Q. That covers a good deal, pretty big ground; what class of electrical work? A. Construction, motor work, power work.

30

Q. Construction of motors, do you mean? A. No, sir; when you speak of construction work it means installing machinery, motors, and so on.

Q. Installing machinery and motors? A. Installing electric motors, starters, switchboards, and so on.

Q. For whom? A. Different people.

Q. Prior to your taking employment with the Toronto Power Company who were you working for? A. Last job?

Q. Yes. A. Edison people, New York City—242nd street.

Q. How long were you with them? A. Three months.

Q. What work were you doing there? A. Electrical work.

40

Q. Same kind you speak of, installing motors and switches? A. No, sir; I had charge of a job.

Q. What sort of a job? A. Electrical job.

Q. What was it? A. The Edison people were furnishing the electri-

city that run a big viaduct. On that job they had electric hoists, pumps, and so on, and they had banks of transformers there, and they have three men, one on every shift, and a foreman who overlooks the job, keeps the lights going in the tunnels, motors in repair, watching transformers, and so on.

Q. That was your job? A. Yes.

Q. Keeping the lights going in the tunnels, and so on? A. Yes, sir.

Q. You held that for three months. What other work besides three months with the Edison Company? A. Previous to that?

10 Q. Yes. A. For the Hooker Chemical Company, Niagara Falls, New York.

Q. What class of work? A. Electrical work.

Q. What electrical work? A. General construction.

Q. On their plant? A. Yes.

Q. How long were you with them? A. About six months, I should say.

Q. Can you tell me any other position you held? A. Previous to that I was with the Government.

Q. In what capacity? A. Electrician.

20 Q. Where? A. In the Signal Corps.

Q. Where? A. United States Signal Corps.

Q. What is that? A. That is the branch of the army that does all the electrical work for the Government.

Q. You were a soldier? A. Yes.

Q. How long? A. Five and one-half years.

Q. Five and one-half years soldiering with the United States Government—is that it? A. Yes, sir.

Q. Got your discharge? A. Yes.

30 Q. You went to the two places you told us of, and being out of a job you took this job as rigger? A. Yes.

Q. Rather a come-down for an electrician? A. I don't know; I have done a lot of things in my life.

Q. You consider yourself qualified as an expert? A. What?

Q. You consider yourself an expert? A. In what?

Q. On the branch of things you have spoken of? A. I consider myself a good man.

Q. I understand you were discharged from this company? A. I was.

Q. So that you are here as a discharged employe giving expert evidence against the company? A. Not that I know of.

40 Q. Going back to the evidence you gave. You told my learned friend when he was examining you that when the crane was about 75 feet down the forebay from where you were working the little hook was about five feet from the concrete walk? A. At what time?

Q. When it was down about 75 feet? A. It was closer than that at different times, had to be.

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Q. Just before the crane began to move when Sheppard yelled for the crane to come up? A. Yes.

Q. It was about five feet from the concrete? A. Yes.

Q. Going up or down, or stationary? A. That I could not say.

Q. When you looked down you saw it about five feet from the concrete? A. Yes.

Q. You described the big hook as being up in its proper place? A. Yes.

Q. What is its proper place? A. About three feet from the carriage.

Q. How far from the drum? A. I never measured it—could not say. 10

Q. That is near enough anyway? A. It don't hang under the drum.

Q. It was about five feet from the carriage? A. Yes.

Q. I mean three feet from the carriage? A. Yes.

Q. You would consider that to be the proper place for one of the hooks when not in operation? A. Yes, sir.

Q. That is what you meant when you said the big hook was in its proper place? A. Yes.

Q. You said the foreman, Sheppard, hollered down to bring the crane up to where you were working with the object of lifting up the stop logs? A. Yes. 20

Q. You say when the crane got there the man in the cage moved the carriage over so that the little hook hung over the stop logs? A. Previous to that, when he started up the bay with it he ran the carriage out so that the hook would be over the bay and it wouldn't hit anything or hook on to anybody.

Q. When you say over the bay, you mean over the water? A. Yes, sir.

Q. So that when the crane came up the little hook was hanging over the water so that it could not hit anyone as it came along? A. Yes, hit anybody that would be on the wall.

Q. When you say the wall, you mean the concrete walk that has been described as 7 or 8 or perhaps 10 feet wide? As soon as he got to the place where Mr. Sheppard wanted him to operate you said that Mr. Sheppard gave the signal to stop—or do you remember that? A. The crane operator knows where to stop his crane. That is, he would know in that case where he was going to lift. 30

Q. He would know, seeing the cable around the stop logs and the rigging all around it, he would know that was what was wanted? A. Yes.

Q. When Sheppard hollered for him to come down there he would naturally stop of his own accord? A. Yes.

Q. Being stopped he ran his small hook out over the stop logs? A. Ran his carriage across so that the little hook hung over the edge of the stop logs. 40

Q. Did it still remain about five feet from the stop logs? A. About that.

Q. Is it your idea he was going to use the little hook to lift the stop logs? A. Must have been the crane operator's idea; it wasn't our idea.

Q. I only want to get your idea. Did you gather from what happened he intended to utilize the small hook or the big one? A. Who?

Q. The crane operator? A. He didn't have anything to do with it; he didn't say what hook to use.

Q. He simply ran the carriage out in such a position the small hook remained over the edge of the step logs? A. Yes.

Q. Having got it there, you say that Sheppard gave an order? A. Yes.

Q. Was it a verbal order, or did he give a signal? A. Both.

10 Q. Show me what the signal was? A. He says: Take up your little hook and send down your big one (shows).

Q. Send down the big one? A. Send down the big one.

Q. That was a perfectly proper order under the circumstances, was not it? A. Yes.

Q. Take up your little hook and send down your big one.

Q. I presume he would understand he was to take up the little hook to its proper place and let down the big one for the purpose of lifting the logs? A. Yes.

20 Q. That would be the correct operation in answer to that order of Sheppard's, would not it? A. Yes, sir.

Q. And is there any doubt the craneman knows where the proper place for the hooks is? A. He knows where the proper place is. He knows what it is safe to run them up when they are out of the way or anything.

Q. So that it would have been a proper thing for him to do, having got that order from Mr. Sheppard to run his hook up to within three feet of the carriage? A. Under ordinary circumstances.

Q. And let his big hook down? A. Under ordinary circumstances.

Q. There was nothing extraordinary about these circumstances? A. A little bit.

30 Q. What? A. There was two men sitting out on a plank liable to get knocked off if the hook hit them.

Q. If the hook came down? A. If the big hook came down to such a place where—it was already swinging—quite a weight behind that hook; it wouldn't take much to brush a man off.

Q. That was the only circumstance different from ordinary circumstances? A. Yes.

Q. How fast do these hooks operate going up and down? A. Well, I don't believe I can say as to that.

40 Q. Is it slow or fast? A. The little hook travels slightly faster than the big one. To every foot of the big hook I should say the little one travelled one foot four inches, or one foot six inches.

Q. You think perhaps half as fast again as the big hook? A. Yes.

Q. Did the big hook travel fast or slow? A. The big hook travels very slow; don't travel very fast.

Q. How long would it take to drop it from the position you saw it in

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down to where the stop logs were? A. I don't know. Somebody else will be more qualified to tell you that than me; I never timed it.

Q. Have you got any idea at all? A. I should judge maybe 1-2 a minute, 3-4 of a minute—something like that; it is pretty hard to tell that.

Q. The speed never varies? A. Not unless the controllers—not unless it is changed from the cage.

Q. I may be right or wrong; my instructions are you cannot vary it, it is constant speed? A. It is if your controller is on full; if your controller ain't on full it ain't.

Q. It will go slow then? A. It will go slower. 10

Q. Have you ever seen these controllers? A. Yes.

Q. You say there is a means of changing the speed? A. Certainly; when you throw your controller on the first point it starts slow, very slow; sometimes it won't start. Give another point and it will start picking up or go down slow.

Q. How many points on the controller? A. I think there is 7 on that.

Q. At any rate, of course, throw it on full and the speed is constant, and you think travelling slow it would take 1-2 a minute to 3-4 of a minute to come down? A. Something around there; I wouldn't want to say definite. 20

Q. In the meantime, would you consider it the proper thing for the man in the cage, the crane operator, to operate both hooks at the same time? A. I never did myself. I was up there after the accident. Of course that man had run the crane for two years and eight months — I think it was two years and eight months. His record in one of the largest steel mills in Pennsylvania was he never had an accident. He was probably thoroughly familiar with running his hooks at the same time.

Q. He had run a crane for two years and eight months in one of the largest mills in Pennsylvania? A. I think that was his record.

Q. You think possibly familiarity breeds contempt and he tried to run two at the same time? A. I don't think the man was that way. He always seemed very careful and always seemed to watch out for any little thing that would happen, such as a man getting his foot caught in the lift or getting his hand caught in a sling; always very careful when he lifted anything, he would always see that everything was free. 30

Q. In a case of this kind, in attempting to raise one hook and lower the other, how do you account for his allowing one to go so high as he did? A. The only way I can account for it, he was watching us down below; the hook swinging when he got the order to let the big hook down, he moved the carriage over so that the big hook would come in line with the hitch—that would be in line with the edge of the stop logs—he brought his little hook four or five feet back in on the stop logs. The men on the planks he was watching them; he had to run the hook away down; I think we had about 12 or 14 inches of the eye left. We would have to let 40

the hook away down and come up underneath it. I think he was watching out for them two men.

Q. Can you tell us where was the big hook when the little one broke—fell? A. I don't seem to remember the big hook at all.

Q. If the little hook travels faster than the big one and the little one started about five feet from the concrete it must have got up to the top before the big one got down.

MR. PHELAN: We do not know when the big one started.

10 WITNESS: He might have opened his controller on the big hook first, then moved the carriage over, then started the little hook going up. He might have moved his carriage afterwards.

MR. PHELAN: Not things he might have done.

MR. MCCARTHY: Q. He might have raised his small hook and put it in place before he started to lower the other one? A. He was only doing what everybody else was doing, as he was told.

Q. His orders were: Take up your little hook and let down your big hook? A. Yes.

20 Q. One way of performing that order, and according to my instructions the proper way, would be to take up the little hook in position and then let down the big one? A. He got signals at the same time.

Q. They meant what the words said; they would come simultaneously—take up the big one and let down the little one? A. Around a place like that I always observe when you use one hook and want to use the other you will tell the fellow to take one up and send down the other, or vice versa.

Q. You told us when you started to operate you did not do it that way, you always took up one before letting down the other? A. Yes.

Q. You did that because it was the proper thing to do, I presume? A. I did that because I didn't want to take any chances.

30 Q. Quite so? A. A man has got to be in a crane steady day after day to be used—

Q. Take chances? A. Able to stay there and know what he is doing; he has got five controllers around there.

Q. Do not tell us you are using five controllers at the same time? A. No; when you are using two you are liable to make a mistake and get the wrong one.

Q. Are you using three? A. I saw him use four.

Q. At the same time? A. Yes.

40 Q. What were the four controllers doing at the same time? A. One hook is going up and one down, carriage going over and carriage coming down the bay.

Q. The crane would be going down the bay travelling along the rails? A. Yes.

Q. While he would be doing that he would be raising one hook and lowering the other? A. That happens in putting in a piece of penstock, something like that, moving a hatch in line with the penstock, dipping it

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Cross-Ex-
amination.
—continued

to give it the necessary twist; to do that he had to move the carriage over a little and shift the hooks.

Q. It would require an expert to do that? A. Yes.

Q. What was being done on this occasion; the crane was stationary, was it not? A. Yes.

Q. And remained stationary? A. Yes.

Q. He had run his carriage out to the proper place? A. Yes.

Q. And that was stationary? A. Yes.

Q. The only two controllers he had to operate was one controller which operates the small block and the other controller which operates the big block? A. He ran his carriage over four or five feet to bring his big hook over the top of the logs. Whether he done that before or after the hooks was coming up and going down— 10

Q. You do not know? A. I don't know.

Q. At any rate if he was trying to do three movements it would be more dangerous than trying to do two, and trying to do two would be more dangerous than trying to do one? A. Yes sir.

Q. You say that Sheppard after giving this order turned. Where were you and what were you doing? A. Got through putting the hitch on and waiting for the hook. 20

Q. Where were you standing? A. Well, standing three or four inches to one side of the hitch, right at the edge of the stop log.

Q. You say that Sheppard turned around; what did he do? A. Went over and started to chop the ice off the ends.

Q. Off the ends of—? A.—The stop logs.

Q. You said that you did not think he could see the hooks going up and down? A. I don't think he was in a position to see it.

Q. Is not it so where there is a foreman on the job, and in a case of this kind where he gives an order to the foreman, let one hook down and take the other up, he would leave it to the craneman to carry out that operation as he saw fit? A. I would not say so. 30

Q. You would think a third party ought to come in? A. No sir.

Q. You would bring somebody else in? A. No sir.

Q. What I could not just follow is what the signalman would do in a case of that kind. Take this particular operation; the foreman gave this order, which was a perfectly proper order to give—take up your little hook and let down your big one—and what would the signalman do? A. The foreman would either tell the signalman to watch or if he went away he would do the watching.

Q. When the signalman was there the foreman would tell him? A. If 40 he did tell him.

Q. I asked you what the signalman would do if he was there? A. Give signals.

Q. Who would he get his instructions from? A. The foreman.

Q. The foreman would instruct the signalman? A. Yes.

Q. Supposing he gave him the same order, Take the small one up and let the big one down—what would the signalman do? A. He would do the same thing.

Q. He would transmit the order to the crane operator? A. Yes, sir.

Q. Then what would he do? A. Then he would watch him.

Q. Then he would watch him? A. Supposed to watch.

Q. The crane operator would have to watch the signalman? A. Yes.

Q. His eyes would be on him all the time? A. That is the way they should be.

10 Q. The signalman would have to keep one eye on the small block and one eye on the big block? A. That would not be very hard.

Q. I quite agree with you, it would not be at all hard. The man in the cage would watch the signalman? A. Yes.

Q. Would it be any harder for the man in the cage to watch those two blocks than the man down below? A. No, and—

Q. Wait a moment.

MR. PHELAN: Let him answer the question.

MR. MCCARTHY: He has answered.

MR. PHELAN: He didn't finish.

20 Q. What do you want to say? A. I want to say it wasn't his place to watch the hooks at that time.

MR. MCCARTHY: Q. I am asking you as a matter of fact, would not he have been in a better position to see the two blocks from his cage than any signalman down below? A. He would.

Q. You said you were at the Aluminum plant just now—I did not catch that? A. I worked there some time ago.

Q. How long? A. I don't remember how long; it wasn't very long.

30 Q. We won't go back as far as that. You spoke of two or three devices to put on cranes; one device I think was the limit switch with the worm gear? A. Yes.

Q. Where have you ever seen that work? A. There is one at the Ontario Power House now.

Q. Have you seen that operated? A. Yes, sir, no later than a week ago.

Q. You are not there now? A. I am here.

Q. You are not working there? A. Yes, sir.

Q. How long have you been there? A. Since July 10th.

Q. What class of crane have they got there? A. I don't just know the name of it, what make; it is the same style, travelling crane.

Q. One or two hooks? A. Two.

40 Q. Sure of that, are you? A. Yes.

Q. What weight? A. I think the big one is 80 ton and the other 50 ton.

Q. Have you ever known them to fail to work? A. They say it don't fail to work around there.

Q. I did not ask what they say; have you ever known it to fail to work?

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RECORD. A. Never failed to work for the crane runner, if he was lifting something that might want it.

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Cattley,
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Q. Have you ever known it to fail to work? A. Not that I know of.

Q. Will you swear it never has failed to work? A. No, sir.

Q. I do not think you will, at least I hope you will not. This other device you spoke of, have you ever seen that in operation? A. Yes.

Q. Where? A. I saw it on one device with the arm, the catch.

Q. That is the hydraulic hoist? A. No, it is not a hydraulic hoist.

Q. I understood that is what you were describing? A. No.

Q. What was it with the arm? A. Electric hoist. 10

Q. With the arm? A. Yes.

Q. Have you ever known that to fail to work? A. No.

Q. How long did you know it? A. Three months.

Q. How long ago? A. August, September and October—last year.

Q. These switches you speak of are of comparatively recent introduction? A. Not that I know of. The Government uses them; they used them some years ago.

Q. Where did the Government use them? A. In the Coast Artillery Forces.

Q. As a matter of fact, do you know whether they had been perfected at all? A. They were perfected as far as they go; how far they go I cannot say. 20

Q. Have you ever been inside the Canadian Niagara Power House? A. I have.

Q. Are you aware of the fact that they had them there? A. No, sir.

Q. How recently were you there? A. I went through there one day in July.

Q. Did they have them there then? A. I cannot say.

Q. Do you know whether as a matter of fact they took them out? A. I don't know whether they had them in to take them out. 30

Q. You do not know whether they had them in or took them out? A. No.

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Albert C.
Biern-
stible,
Examina-
tion.

ALBERT C. BIERNSTIBLE. Sworn. Examined by MR. PHELAN:

Q. What is your occupation? A. Crane operator.

Q. How many years' experience? A. About eight years.

Q. How many different companies? A. Roger, Brown Iron Company.

Q. Where are they? A. Lackawanna, New York.

Q. A big plant? A. Employ about 7,000 men.

Q. Where else did you work? A. Lackawanna Steel Company.

Q. Another big plant? A. Yes, sir. 40

Q. Where else? A. That is all.

Q. Those two places. What kind of cranes does your experience cover? A. Morgan crane.

Q. I do not mean the make of crane; how were they operated, by what power? A. Electricity.

Q. Travelling cranes or the other kind? A. Travelling.

Q. Are there devices with which those cranes can be equipped—?
A. Yes.

Q. Wait till you hear my question—whereby the pulleys will be prevented coming in contact with the upper pulleys and the cable being broken? A. Yes, sir.

Q. What do you call those devices? A. Well, the only one I know of,
10 that I seen in operation, is the limit switch.

Q. Will you describe to the jury just how that switch works? A. The limit switch works off the drum; there is a gear wheel on the drum; shaft runs out of that and the screw on the drum turns around and when it gets on the end of the shaft it strikes the carbon and breaks the circuit; that will stop the motor.

Q. And your pulley will stop in whatever position it is at that particular moment in the air? A. Yes.

Q. Can that limit switch be set to stop the pulley automatically at any point? A. I never tried that.

20 Q. At what point are they usually set? A. Oh, 6 or 7 feet from the drum.

Q. Do you know the crane used by the defendant company? A. No sir.

Q. You never saw that? A. No sir.

Q. You do not know whether it is equipped with anything of that kind or not? A. No sir.

Q. Is there any other kind of safety device? A. I have heard of the circuit breaker, but I don't understand that; I never worked that.

30 Q. Where has the limit switch been used you have just described? A. At the Roger-Brown.

Q. Any place else you know of? A. I am pretty sure they have them at the Lackawanna, but I never worked one.

Q. Is there anything else besides a mechanical device that is used as a means of safety in the operation of these cranes? A. You have got your controller, switch, right in the carriage.

Q. Apart altogether from a mechanical device, what is the system by means of which these cranes are usually operated? A. By a signalman.

Q. What are the duties of a signalman? A. Signalman is supposed to signal to the operator just what he wants.

40 Q. Has he any other duties to perform except the control of the raising and lowering of the hooks and shifting of the crane? A. That all depends; some places uses machinists for that, the man that is doing the job; he will give orders, signals, while he is working. Nobody else dasn't give signals while he is giving them; he is supposed to be the signalman.

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stable,
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amination.

Q. Is that in addition to the foreman who is in charge of the work? A. Yes.

Q. As I understand it, the foreman transmits the signals to the signalman, who controls the operation of the work? A. If the foreman is taking charge of it.

Q. How many of these signalmen is it customary to employ? A. One. The boss rigger is supposed to be signalman; that is his job.

Q. Suppose there is more than one crane in operation? A. Only one signalman to each crane.

Q. Who has the control—I do not mean the mechanical control, but whose duty is it to start and stop the pulleys as they are raised and lowered? A. The crane operator.

Q. I do not mean who does the mechanical work, but whose duty is it—? A. The signalman.

Q. Does he have complete control of that? A. He does until he gives the crane man the signal he is through with the crane; then it is the crane man's duty to pull the pulleys up at the proper place.

Q. Suppose the signalman gives the crane man a signal to raise one pulley and lower another at the same time, whose duty will it be then to control the operation? A. That is up to the signalman until both hooks come opposite each other; then it is up to the crane man to shut one of them off.

CROSS-EXAMINED by Mr. McCARTHY:

Q. You were the crane operator at the Roger-Brown Company? A. Yes.

Q. How long? A. Oh, I should judge 4½ years.

Q. That is how long ago? A. About five years.

Q. What was the nature of the crane you were operating there? A. Morgan crane.

Q. With one or two hooks? A. Two hooks. 30

Q. Lifting what sort of pieces? A. This was in the engine-room.

Q. In the engine room? A. Yes.

Q. What work would you be doing in the engine room? A. If something goes wrong with an engine—have a breakdown, take the cylinders off, take off the air tubes—

Q. Was it a big room? A. 700 feet long.

Q. Handling engines which have to be removed or altered or repaired from time to time? A. Yes.

Q. Was that crane kept constantly going or only occasionally operated? A. Pretty nearly constant. 40

Q. You were the man in the cage? A. Yes.

Q. I suppose in operating that crane there would be plenty of times you could not see just what the nature of the operation was and you would have to rely on the signals of the men? A. Yes.

Q. You told my learned friend just now the boss rigger was supposed to be the signalman? A. Yes.

Q. That is, you as crane operator would take your orders and signals from the boss rigger? A. From the boss rigger.

Q. Take the case my learned friend suggests: If the boss rigger told you to move your crane along and you came to the particular place where they wanted to work, and you had one hook down and the other up, and the boss rigger called out to you—Take your small hook up and let your big one down? A. Yes.

10 Q. After he had given you that order who would be responsible for the movement of the hooks? A. He is responsible for the movement of the hook that is coming down.

Q. He is responsible——? A. For the hook that is coming down.

HIS LORDSHIP: Q. Who is he? A. The boss rigger.

MR. MCCARTHY: Q. The boss rigger would be responsible for the one that is coming down; who would be responsible for the one that is going up? A. The operator.

Q. The boss rigger once he told you he was going to use the big hook, he would be the man to tell you when it got to the place where he wanted it?

20 A. He is the man who is supposed to watch the hook and give orders when to stop it.

Q. The hook that is going up, the operator in the cage would be responsible for that? A. He is responsible for the hook that is going up.

Q. These devices you spoke of—the first one is the limit switch with the worm gear? A. Yes.

Q. Where is that installed? A. It is installed up on the drum.

Q. Was it used at Roger-Brown's? A. Yes.

Q. Had they it there the whole time you were there? A. They had it there but I never operated them.

30 Q. There wasn't one on the crane you operated? A. No.

Q. They had it there on some of the other cranes? A. Yes.

Q. You depended entirely on the signals of the boss rigger? A. Yes.

Q. During the time you were there did you experience any trouble? A. No sir; I have had trouble with the crane but not to hurt anybody.

Q. I mean were there any accidents? A. No sir.

Q. As you sit in your cage—this is important to the jury—have you a complete view of the two hooks as they go up and down? A. You have until they get away down to the bottom.

40 Q. Until they get to the bottom? A. If he is working right down at the bottom you have to lean away over your controller to see what is going on; that is why I would rely on the signalman.

Q. Once the hook gets down——? A. If your work is pretty close to the ground.

Q. Then you rely on the signalman? A. Yes.

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tible.
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amination.

Q. When the hooks are going up they are right in your view? A. In your view until it gets within a few feet of the drum.

Q. How do you stop it? A. With your controller.

Q. Just a motion? A. Just a motion.

Q. The other devices you have spoken of, have you ever seen them in operation, or are you just speaking from hearsay? A. I have heard quite a bit how a circuit breaker works.

Q. Are you conversant with them in operation? A. No, I have never seen them working.

Q. These limit switches you speak of—ever know of them getting out of order? A. No sir.

Q. You have never operated them yourself so that you do not know by experience of them getting out of order or heard of them? A. No sir.

Q. As to the circuit breakers you cannot give any information gained from practical experience? A. The only information I can give, it is set to a certain place. You set your hook for maybe 8 or 9 or maybe 10 feet from the drum; you have your circuit breaker set there and when it gets that high it will break the circuit, won't go any higher. If the signalman wants you to go any higher, all you have to do is to hold the circuit breaker in and you can go as high as you want to. Just as soon as you leave in the circuit breaker it will stop it. 20

Q. Those were appliances for the man in the cage to work? A. Yes sir.

Q. The less appliances you have the better—is not that so—and the more simple the operation. You are the only witness who has actually been in a cage and can speak with authority. Is not it so the less mechanism you have in your cage the better and simpler it is to work? A. Sure; it is easier for the operator.

RE-EXAMINED by MR. PHELAN:

Q. What do you consider the important thing, ease for the operator or safety for the people who are working around him? A. If you have an operator you can depend on you don't need a safety device. 30

Q. What are those safety devices put in for? A. To save trouble.

Q. That is——? A. Prevent accidents.

Q. Even the best operator is liable to make mistakes? A. Yes, sir.

MR. MCCARTHY: Are not you leading?

MR. PHELAN: Q. When that occurs the safety device is there to correct his errors? A. Yes.

MR. PHELAN: That is the plaintiff's case, My Lord.

DEFENCE.

RECORD.

DOUGLAS H. McDOUGALL, Sworn. Examined by MR. McCARTHY:

Q. What position do you hold in the defendant company, the Toronto Power Company? A. Assistant to the General Manager.

Q. The Toronto Power Company I believe have a lease of the property from the Electrical Development Company where the accident occurred? A. Yes.

Q. They are the present lessees? A. Yes.

10 Q. And they were the lessees when the accident happened? A. Yes sir.

Q. When did the Toronto Power Company lease from the Electrical Development Company? A. March first, 1908.

Q. By whom was the electrical development designed, the works, appliances and so on? A. Designed by Pearson Engineering Corporation, New York City.

Q. Who is the head of that institution? A. Dr. F. S. Pearson.

Q. Is he responsible—we need not go into anything further than the crane in the forebay? A. Responsible for the design of all the equipment.

20 Q. What do you say as to Dr. Pearson's reputation as an engineer? A. He has an international reputation, as good a reputation as any engineer in America. He is head of the Pearson Engineering Corporation, which designed and built the Rio de Janeiro Tramway Light and Power Company, Sao Paulo Tramway Light and Power Company, Mexican Tramways and Power Company; now constructing a very large plant in Barcelona, Spain. Built our company and the plant in Winnipeg of the Winnipeg Power Company, and several others I don't know of.

30 Q. When the Toronto Power Company leased the property of the Electrical Development Company they found the property as it is to-day—I mean the condition of the appliances in the forebay as they are to-day? A. Approximately, I should say that is right.

Q. Have they made any alterations or changes? A. They have that power. I am not familiar with that part of it.

Q. They have the power to do so but you are not familiar with that? A. No sir.

40 Q. Who is put in charge of that branch of it, or how many branches are there? A. The Chief Engineer is in charge of the operation of the power plant; under him the Master Mechanic has charge of the mechanical part of it, and the Chief Electrician has charge of the electrical equipment.

Q. Thus there are practically three men——? A. Three men in charge of the plant.

Q. At the time of this accident in February last who was the Chief Engineer? A. W. B. Boyd.

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Q. Was he an engineer of experience, a competent man? A. Wait a minute—February last—I wish to retract; F. G. Clarke was Chief Engineer.

Q. Mr. Boyd had been prior to that? A. Yes.

Q. What do you say as to Boyd's qualifications? A. Well, he was a capable engineer.

Q. Of experience? A. Yes.

Q. What was he? A. Chief Engineer of the plant.

Q. Who was the Mechanical Superintendent? A. Mr. McCarthy.

Q. How long had he been there? A. I don't know exactly when he was first employed; he was assistant to the former Master Mechanic. To my knowledge he has been there since 1907, I would say. 10

Q. What do you say as to his qualifications as Master Mechanic? A. Have been very satisfactory to the company.

Q. Who is the Electrical Engineer? A. Mr. Burrows.

Q. What do you say as to his qualifications? A. I have never heard that they had not been satisfactory.

Q. Are they or are they not? Is he a man of experience; can you tell anything about him? A. He is an experienced electrician.

HIS LORDSHIP: Q. How long has he been with the company? A. I really don't know. That is a part in connection with the operation of the plant. I think he has been there four or five years. 20

Q. These three men: Chief Engineer, Electrical Engineer and Mechanical Superintendent—are they the men who are responsible for the up-keep and the looking after of the plant? A. The Master Mechanic is responsible for the up-keep of the mechanical part of the plant and the electrician for the electrical equipment, under the Chief Engineer.

Q. Who is the General Manager? A. Mr. R. J. Fleming, of Toronto.

Q. Is he either a mechanical or electrical man? A. He is not a practical man. 30

Q. Nor the Board of Directors, I presume? A. No sir.

Q. So that the company have to rely on the three men you have mentioned for the improvements to the plant from time to time? A. Yes, and for its maintenance.

Q. Does the company furnish them with the necessary resources and materials for that purpose? A. Anything that is suggested by them is provided; if it runs over a certain amount of money it might be submitted to the Consulting Engineer's office in New York, Dr. Pearson, for further report, but otherwise their recommendation would probably be accepted.

Q. If it runs into a large amount of money it would probably be submitted to Dr. Pearson, who is still the Consulting Engineer? A. Still the Consulting Engineer. 40

Q. And before a large amount of money would be spent you say it would be submitted to him? A. Probably submitted to him.

Q. And the directors or general manager are influenced by his opinion? A. Absolutely. RECORD.

Q. You yourself do not know anything about the mechanical part of it at all? A. No sir. *In the Supreme Court of Ontario.*

Q. You simply submit what is passed on by these men. Can you give me any idea as to the average wage? You remember this man Paskwan who was killed? A. I heard a report of the accident. No. 6 Evidence at Trial.

Q. He was a rigger, I am told? A. Yes.

10 Q. Can you give me the average wage of a rigger per annum? A. A rigger gets 30 cents an hour working full time. Douglas H. McDougall, Examination.

Q. I do not want that; I want to know if you can give me the average earnings of a rigger from your books?

MR. PHELAN: Q. Are the books here? A. No.

MR. PHELAN: I would prefer to see the books.

MR. MCCARTHY: Q. Have you looked over the books to get that average? A. I have looked over the books.

MR. PHELAN: I object to that, My Lord.

HIS LORDSHIP: The books should be here that the information is taken from.

20 WITNESS: I took the information from the pay rolls.

MR. PHELAN: We prefer to see the pay rolls.

MR. MCCARTHY: They can be produced if they are not too far away.

Q. Where are they? A. In Toronto.

MR. MCCARTHY: They cannot be produced to-night; we will have to let it stand until to-morrow if they are to be produced. I asked Mr. McDougall to get the information from them.

Q. Have you got that information? A. Yes.

30 MR. MCCARTHY: If His Lordship rules they must be produced I will have to let the witness stand down for the present and take that part of it up to-morrow.

MR. PHELAN: I understand you will recall the witness, reserving my right of cross-examination?

HIS LORDSHIP: Yes.

MR. MCCARTHY: We cannot get these pay rolls before to-morrow now.

HIS LORDSHIP: That is unfortunate.

MR. MCCARTHY: Mr. McDougall made the copy; my learned friend will not accept that.

MR. PHELAN: Where are they?

40 HIS LORDSHIP: He has something that may be accepted as accurate and which may get over the difficulty. I cannot force Mr. Phelan to accept it.

MR. PHELAN: Let me see it. It may be I will accept it, although it is not a very satisfactory way of doing it.

MR. MCCARTHY: That is the way I have always done it and I never have had it questioned yet, never in all my life.

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MR. PHELAN: (after perusing) I will accept that.

MR. MCCARTHY: Q. Go ahead then. I asked for the average wage per annum of a rigger, from the books? A. First—

Q. I do not want individuals, I want the average. On the average what does a rigger earn? If you can take three men and find out what they earn and divide it by three that will do; I want the average earnings of a rigger per annum? A. About \$878.

Q. That is the average? A. Yes.

HIS LORDSHIP: Q. That is the average annually? A. Yes.

MR. MCCARTHY: Q. How do you arrive at that? A. It is worked out 10 by taking two samples of actual money earned by riggers at 30 cents an hour, each one for a separate year, and averaging it, for a man getting full time at 30 cents an hour, without any overtime, and averaging those two men's earnings—dividing it by two—would bring it \$878.40 a year.

CROSS-EXAMINED BY MR. PHELAN:

Q. Will you please let me see that sheet? You have in your employment how many riggers on an average? A. When we are doing construction work it varies. I would not say we have more than two or three as a rule; the Master Mechanic will tell you that.

Q. At the time of the accident there were six or seven there? A. I 20 haven't any doubt there were.

Q. How did you come to select these two, Mysner and Larson? A. They were continuous men for a year, the first two we struck.

Q. Then you have another Larson here? A. He is a foreman.

Q. Put in 3,954 hours? A. Same man, another year; he is getting a higher rate different times.

Q. Was he a foreman or rigger? A. The Master Mechanic will tell you that; I don't know.

Q. If we had the books here they might give us that information. You do not know whether he was a foreman or ordinary workman? A. He was 30 a rigger part of the time.

Q. Do the figures which you have here indicate the wages he got from your firm as a rigger? A. Raise in the rates.

MR. MCCARTHY: Q. I am told he used to be foreman rigger? A. Yes.

MR. PHELAN: Q. Is this when he was foreman or ordinary rigger? A. This is when he was rigger; 30c. an hour is ordinary rigger's rate.

Q. Does this other column indicate his wages when he was foreman? A. Part of it.

Q. Which part, wages or rate? A. You can tell by the rate.

Q. What was the rate of the foreman? A. About 35 cents usually. 40

Q. Did you see the books or was this document taken from the pay rolls? A. Saw the pay rolls.

Q. Was Mysner's 3,125 hours the maximum time of a rigger working during any year? A. I don't know.

Q. There may have been more than that? A. Possibly.

Q. What do you say that the maximum would be? I see that Larson worked 3,900 hours? A. He is foreman.

Q. Can you say that there is no rigger worked as much as Larson worked as foreman? A. I would not say that.

Q. You are not prepared to say that 3,100 is the maximum? A. No, sir.

Q. What is the average? A. 2,928 hours.

Q. You are not prepared to say that that is the actual average in your employment? A. No.

10 Q. It may be more than that. Do the riggers ever get more than 30 cents an hour; I am not speaking of foremen riggers? A. That is the general rate.

Q. Do they ever get more than that while in your employment? A. Not that I know of.

Q. Would you know if they got it? A. I would know at the time; I have forgotten.

Q. Will you say that they did not earn as high as 35 cents an hour? A. No.

Q. Is 30 cents the maximum? A. It is the average.

20 Q. Is 30 cents the maximum? A. I don't know.

Q. Do you know of any circumstance where they would get less than 30 cents? A. As rigger?

Q. Yes. A. No.

Q. Do you know of any occasion where they got more than 30 cents, any particular occasion?

MR. MCCARTHY: Q. As a rigger? A. No.

MR. PHELAN: Q. You don't know? A. No.

Q. Who would know? A. Probably the Master Mechanic.

Q. Probably the Master Mechanic? A. Yes.

30 Q. Is that one of your duties, to know this? A. The Chief Engineer passes on the rates.

Q. So that as I understand your evidence, you are not prepared to say what is the average wages for a rigger or what is the average number of hours a rigger works during the year, in your employment? A. That is from my observation of these pay rolls.

Q. I understand you cannot give us definite answers to either of these two questions? A. That is right.

Q. This would indicate the average is somewhere around 3,000 hours a year? A. About that.

40 Q. Or \$900 a year? A. \$878.40.

Q. That is what you worked out from the two particular instances? A. Two with the full time of a rigger under ordinary, normal hours.

Q. How do you figure out the ordinary, normal hours—how do you arrive at that? A. Taking the full number of hours in the year and taking Sundays out.

RECORD.

In the
Supreme
Court of
Ontario.

No. 6
Evidence
at Trial.

Douglas H.
McDougall,
Cross-Ex-
amination.

—continued

RECORD.

*In the
Supreme
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No. 6
Evidence
at Trial.

Douglas H.
McDougall,
Cross-Ex-
amination.
—continued

Q. What is the full hours in a year? A. 365 days to start out with; take off 52 Sundays; take off 7 holidays; allowing 9 hours for Saturdays except during June, July and August, when we allow five hours. Multiplying that out—

Q. Those men work overtime? A. Occasionally they are sick, too.

Q. Occasionally they work overtime? A. Yes.

Q. This one man worked 3,125 hours? A. He worked some overtime; the other man worked under.

Q. Although there are only 2,956 working hours in the year this one man drew pay for 3,125 hours? A. That is right. 10

Q. I want to ask you a question or two as to the conditions under which your company operates. The plant and assets are the property of the Electrical Development Company? A. Yes, sir.

Q. They installed the plant—bought the assets and franchises and installed the plant? A. It is their property.

Q. They did all that work? A. Yes, up till 1908.

Q. You were formed as a subsidiary operating company to operate the plant for the Electrical Development Company? A. No.

Q. You say that is not correct? A. It is not exactly correct.

Q. What is the correct relation? A. The Electrical Development Company were unable to finance themselves and they leased their plant to the Toronto Power Company. 20

Q. Is there no relationship between the two companies except that of landlord and tenant? A. The Toronto Power Company own the bonds and stock of the Electrical Development Company.

Q. They own the bonds and stock of the Electrical Development Company? A. Yes.

Q. Apart from that, tell us any relation? A. They operate it.

Q. For themselves or the Electrical Development Company? A. For both. 30

Q. When you went in to take charge you found a plant ready to hand to do your work? A. I am the treasurer of the Electrical Development Company from the start.

Q. Answer the question. You found ready to hand a plant ready for operation? A. It was all ready; it had been operated; yes.

Q. You say that it was installed by Dr. Pearson? A. Yes.

Q. Is Dr. Pearson himself an engineer of repute? A. Yes.

Q. I always thought he was more a financier than an engineer? A. Yes, both.

Q. More particularly a financier than engineer? A. He has become so lately. 40

Q. He has been that for some years past? A. Principally engineering, until the last three or four years.

Q. When was this plant installed over here. A. Started in 1903.

Q. That is ten years ago? A. Yes.

Q. Were you working with the same plant you put in ten years ago?
 A. It started operation in November, 1906, I think.

Q. You have the same plant you started with in 1906?
 A. It was added to from time to time.

Q. The original plant is still in use?
 A. Yes.

Q. What make of crane is this?
 A. Canada Foundry.

Q. Designed by whom?
 A. Specifications were drawn by the Pearson Engineering Corporation.

10 Q. Of course they may have been drawn by a student or any person else in the corporation, as far as you know?
 A. They have to pass either Dr. Pearson or his assistant.

Q. Have you ever been in the Dr. Pearson establishment?
 A. I have been in the office.

Q. Familiar with their organization or method of doing these things?
 A. Yes.

Q. So familiar that you are prepared to pledge your oath as to how they do their work?
 A. Yes.

20 Q. Do you say the plans for this particular plant had the personal inspection of Dr. Pearson?
 A. Dr. Pearson or Mr. L. J. Hirt, his assistant.

Q. You are pledging your oath to that, either one of these gentlemen gave personal inspection and approval to all the plans and specifications of the plant of the Toronto Power Company; is that what I understand?
 A. Yes.

Q. This crane was designed upwards of ten years ago?
 A. No. It was installed, I think, about 1905.

Q. How long before that was it designed?
 A. Probably 1904, end of 1904.

30 Q. Mackenzie & Mann and Dr. Pearson and other personages have kept up with the times since then, but this crane has not had anything done to it since this date?
 A. Why Mackenzie & Mann?

Q. I am putting the question that way; nothing has been done to the crane since that date?
 A. It has been maintained.

Q. No new improvements in safety devices or anything of that kind put on?
 A. Not that I know of.

Q. I suppose you have certain systems and methods of doing your work and carrying on your enterprise?
 A. A few.

Q. Will you say you have more than a few, you have many?
 A. What particular part are you referring to?

40 Q. The plant where this accident happened?
 A. Will you repeat the question?

Q. You have systems and method for carrying on your work?
 A. Yes, sir.

Q. Were those systems and methods in existence when you took the plant over from the other company?
 A. I am not familiar with that; I don't know.

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*In the
 Supreme
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No. 6
 Evidence
 at Trial.

Douglas H.
 McDougall,
 Cross-Ex-
 amination.
 —continued

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at Trial.

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McDougall
Cross-Ex-
amination.
—continued

Q. You are not familiar with that? A. I don't know whether the same systems were in operation.

Q. In the system of operating the cranes, did you take over the same system that was adopted and used by your predecessors, the Electrical Development Company? A. I don't know; I am not familiar with that end of it.

Q. How long had you been in charge? A. I am in charge of the Toronto office.

Q. You are not familiar with that end of it? A. No, sir.

Q. You are not one of the directors? A. No, sir; I am treasurer. 10

Q. You are not familiar as to what changes have been made in the system or methods, or whether any changes have been made? A. No, sir.

Q. Or whether the old systems have been adopted or what has been done about it? A. No.

No. 6
Evidence
at Trial.

Maurice F.
McCarthy,
Examina-
tion.

MAURICE F. McCARTHY, Sworn. Examined by MR. McCARTHY:

Q. You are the mechanical superintendent of the defendant company, Toronto Power Company? A. Yes, sir.

Q. Have been for how long? A. Eight years. Assistant for four years, master mechanic for four years.

Q. What experience did you have before that? A. I worked for the 20 Ontario Power Company, Cliff Power Company, Niagara Falls Machine and Foundry Company, Max Herreschoff.

Q. Experience in mechanical work extending over how many years? A. About 12 years.

Q. Who was your boss rigger? A. At the time of the accident?

Q. Yes. A. Sheppard.

Q. Who was your boss rigger before him? A. T. Dorrington.

Q. How long had Sheppard been with you? A. About two years.

Q. In what capacity? A. The first year he worked as crane operator and then we placed him in as foreman rigger. 30

Q. First as crane operator and afterwards as foreman rigger? A. Yes, sir.

Q. What do you say as to his competence? A. A very good man; we have always found him reliable.

Q. In respect to doing the work you gave him? A. Yes.

Q. Still your boss rigger? A. Yes.

Q. Who was the man who was operating the crane at the time of the accident? A. William Hartary.

Q. Where is he now? He is in Cushing, Oklahoma.

Q. How long was he with you before the accident? A. About eight 40 months, I believe.

Q. Where did he come from? A. Came from the Titusville Iron Works, Pennsylvania.

Q. With good or bad reputation? A. Good recommendation.

Q. Good recommendation from that company as crane operator? A. Yes, sir. RECORD.

Q. Did you engage him especially for that job? A. Yes. In the
Supreme

Q. Had he any experience as far as you knew before he came? A. Two months on the recommendation. Court of
Ontario.

Q. Is the Titusville Iron Works a large concern? A. I believe it is a very large concern; I have never been there. No. 6
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Q. During his time with you, what have you to say as to his capabilities? A. Acted very good; seemed to be a very good crane operator; looked after his work; sober, industrious. at Trial.
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tion.

Q. He left you how long ago? A. Something like a month and a half after the accident. —continued

Q. He left you of his own accord? A. Yes, sir.

Q. He is now in Cushing, Oklahoma? A. I learned that from his uncle.

Q. As mechanical superintendent, have you entire charge of the plant of the Toronto Power Company? A. Of the mechanical part of it.

Q. We need not go into any other part except the forebay where this accident happened. I need not go into the description of the crane; I think it has been correctly given by the other witnesses, so that I will not take you all through it again. Do you know what sort of crane is used in the forebay? A. Yes; forty-ton Canada Foundry crane.

Q. Of what type? A. No particular type; it is standard make crane.

Q. What do you say as to its usage generally? A. By us, you mean?

Q. Is it a crane used generally in this country? A. Yes, it is used a good deal throughout Canada? We have it in the transformer house; we have the three cranes in the power-house, and also the Ontario people use cranes in the transformer house.

Q. The Ontario Power Company use the same type of crane? A. In the transformers.

Q. How does it compare with the type of cranes we have heard of, the Morgan, and so on? A. It is a better crane than a good many I have seen on the market; a good, up-to-date crane.

Q. It is operated by a man in a cage? A. In a cab.

Q. Whatever you want to call it. And he has control of the running up and down the room and also the cross—? A. Cross carriage.

Q. And he controls the dropping of the hooks? A. Yes.

Q. This man Hartary was in charge at the time of the accident? A. Crane operator.

Q. You were not there yourself when the accident happened? A. No, sir.

Q. You don't know the circumstances except by what other people have told you? A. Exactly.

Q. We will not ask you about that. Ever since you have been master mechanic have you had any occasion to make any alterations to that crane? A. Nothing only the usual maintenance, loose bolts and one thing

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tion.

—continued

and another. You have to go over those; we inspect them every day. In fact the crane operator is supposed to go over them every day, which he does.

Q. General maintenance? A. That is part of his duty.

Q. Was the crane at the time of the accident in good condition? A. Yes.

Q. And capable of performing the work it was called upon to do. Something has been said about the use of devices in the way of automatic safety appliances or automatic stopping appliances for use on cranes. Are you familiar with those appliances? A. Some of them. 10

Q. One mentioned here is a limit switch; another one is the automatic arm coming out, which is raised by the hoist? A. Circuit breaker.

Q. Are you familiar with these types of automatic appliances? A. Yes, sir.

Q. Have you got them installed on your crane? A. No.

Q. For what reason? A. As far as I could see, and from enquiring around they are not entirely satisfactory.

Q. Have you ever considered using them? A. Oh, yes; we did consider it. Some two or three years ago we had a consultation on them, and it was agreed at the time we would investigate, which we did. We found 20 out the cutoffs were used in other places, and we also found out they had failed several times. Then we were of the opinion to instal that cut-off would mean putting something in there which would probably in a measure reduce the efficiency of the operator, allowing him to depend on it; therefore we did not put it in.

Q. In the first place, you had a consultation in regard to that very subject, and you made enquiries as to the working of the cut-offs—that is, the common name; what enquiries did you make in regard to the working of the cut-offs? A. From whom?

Q. From whom and the scope of your enquiries? 30

MR. PHELAN: I submit that is not evidence.

HIS LORDSHIP: He can say he made enquiries, but I do not see how he can give evidence of what anybody else said.

MR. MCCARTHY: I am quite content to leave it like that. My learned friend can bring it out in cross-examination if he wants to, and go into the scope of the enquiries.

Q. You did make enquiries? A. Yes.

Q. As the result of the enquiries—?

MR. PHELAN: I object.

MR. MCCARTHY: I repeated what he said. 40

MR. PHELAN: I object, my Lord.

HIS LORDSHIP: He said from what he could see and enquiring around the devices were not satisfactory.

MR. MCCARTHY: Q. As the result of the consultation you determined not to instal them?

MR. PHELAN: I object.

MR. McCARTHY: He already said that; you did not object to it going in.

Q. You said something about the installation of these cut-out devices lessening the efficiency of the man; what did you mean by that? A. If a man knew he had an automatic cut-off that would take care of that hook at a certain point he would become negligent at that one point. He would know very well if he did not take care of it the automatic would. Sometimes the automatic wouldn't work, and perhaps result in a more serious accident than the one that happened.

10 Q. You determined it is better to rely on the man? A. I prefer it.

Q. So that the result of the unanimous decision of the consultation—?

MR. PHELAN: I submit that is not evidence. Surely this company cannot set up a standard.

MR. McCARTHY: No one says they were; that is not the point. Is that the result of the consultation, is the question.

HIS LORDSHIP: The result of enquiry into the matter; I suppose that is as far as you can go; as the result of enquiries he made he did not instal it.

MR. McCARTHY: I can show what steps were taken. That is the whole point, as I understand it.

20 HIS LORDSHIP: You can show the steps he took, but not report what they said.

MR. McCARTHY: Your Lordship did not allow me to finish my proposition.

HIS LORDSHIP: Very well.

MR. McCARTHY: I say I have the right to give evidence, as the result of enquiries on the part of the mechanical superintendent, the electrical superintendent and the chief engineer they determined it was not in the interests of the company to instal it.

HIS LORDSHIP: That is a fact, if he can state it.

30 MR. McCARTHY: Q. Is that the fact as I have stated it. As the result of the consultation between yourself, the electrical engineer and the chief engineer, you determined not to instal these devices? A. Right.

Q. The reasons you have already given us; they were not satisfactory, and you thought they lessened the efficiency of the operator. Is that correct? A. That is correct.

Q. Do you give the instructions to the crane operator? A. Through the foreman rigger, yes, I instruct him.

Q. You instruct the foreman rigger? A. Yes.

40 Q. What instructions, if any, had you given this foreman rigger, Sheppard, in reference to the operation of the crane? A. You mean handling loads and general work?

Q. General work? A. The crane operator has charge of the crane, as far as moving it around from place to place, directed by the signalman when there is a load on the crane.

Q. Who is the signalman? A. Man appointed by the foreman or the foreman himself. The foreman himself generally gives the signals on any

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—continued

RECORD. kind of floor work, because it cuts out the third man. It slows down the work, signalman slows down the work and doesn't give you any good results.

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Ontario.*

Q. Who is your signalman? A. Sheppard.

Q. Sheppard is the boss rigger? A. Yes.

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Q. What instructions did you give Sheppard in regard to the operation of the crane? A. He has charge of the crane as far as handling material goes, and general work about the crane. I don't think I quite get you on that; you mean the detail of it?

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tion.

Q. What I want to know, what instructions did you give Sheppard in regard to the operation of the crane? 10

HIS LORDSHIP: Q. What duties did you assign to him?

—continued

MR. MCCARTHY: Q. What duties has Sheppard got that you assigned to him, instructed him, in regard to the crane? A. I don't think I follow yet.

Q. Sheppard must have certain duties to perform, I presume? A. Yes.

Q. He gets his instructions from you? A. Yes.

Q. What duties has Sheppard to perform in connection with the operating of the crane? A. He moves all material, has charge of all rigging work in the power-house; to handle it, sling it, carry it from place to place as directed, and his orders go with the riggers. 20

Q. How about the crane operator? A. The crane operator works under his orders as well, with the exception, of course, a crane running light is left to the discretion of the operator.

Q. What do you mean by a crane running light? A. Without any load on.

Q. Who dictates or directs the position of the hooks? A. If there is a load on the hook the foreman rigger directs the action of the hook.

Q. If there is not a load on? A. It is left in charge of the craneman; except when a hook would be coming down to be used the signalman would tell him when to stop, at what point, by way of hand. 30

Q. What about a hook going up? A. If they were done with that hook the crane operator would be the man to look after it.

Q. I did not ask you: Any of these devices you looked into, did you find whether it was possible to instal them on these cranes? A. The Make and Break type we looked into; the circuit breaker attachment could not be installed on the crane, nor could the work screw be installed very well on the crane, due to the length of travel. We have pretty nearly two hundred feet of cable travel. You would have to have a cut-out with that range, which would mean additional mechanism. You would have to cut the speed down—borders on the impossible. 40

Q. What is the speed of the hooks now? A. Forebay hooks?

Q. Yes. A. Floor to the drum or the drum down?

Q. Down? A. I would say it would take three or four minutes for the big hook to come down.

Q. What is the relative speed of the two hooks? A. About one-half.

Q. Which one is half as fast as the other? A. The little hook is about twice as fast as the big one.

Q. The big one takes about four minutes? A. Yes.

CROSS-EXAMINED by MR. PHELAN:

Q. Of your twelve years' experience, how much has been spent in connection with cranes, construction or operation? A. I would say about seven years.

Q. How much of that time in the construction end of it? A. About seven years.

10 Q. All of it? A. Yes.

Q. So that you have no experience then in operating them except such as you would get in building them; is that correct? A. That is correct.

Q. Where did you get the seven years' experience in building? A. In building them?

Q. Yes. A. I didn't get seven years' experience.

Q. That is what you said? A. You said it.

Q. You answered Yes? A. Yes; right you are.

Q. Was that answer not correct? A. You said in the building of them; I didn't get the remark.

20 Q. Where did you get the seven years' experience? A. I didn't get seven years.

Q. How many did you get? A. I got no years.

Q. What had you reference to when you said seven years? A. Seven years' experience on construction work where cranes were used.

MR. MCCARTHY: Construction work with cranes.

MR. PHELAN: Q. Seven years' construction work with cranes, not on cranes? A. Yes.

Q. What kind of cranes were they? A. Niles crane.

30 Q. Electric travelling crane or boom and derrick? A. Electric travelling crane.

Q. How many electric travelling cranes have you had experience on? A. Four or five.

Q. Where? A. Ontario Power Company.

Q. When? A. That would be nine years ago.

Q. Did they have those safety devices we have heard about to-day, or any of them? A. They have them on the crane now, but I couldn't say whether they had them on then.

Q. You were not taking much interest in the operation of the crane at that time? A. That is a detail; I had nothing to do with them.

40 Q. I want to see what knowledge you had of safety devices; you do not know whether they used safety devices or not nine years ago? A. No.

Q. They do use safety devices now? A. I believe they do.

Q. What kind? A. They use the worm and gear.

Q. What is the length of their travel? A. About thirty-five feet.

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—continued

Q. How many cranes have they got of that kind? A. Two cranes.

Q. Both travel the same distance? A. Yes.

Q. I understand the distance the crane travels won't make any difference to the use of the worm gear? A. It won't?

Q. Will it? A. Yes.

Q. Why? A. Because you have got to have longer travel, you have got to have greater range.

Q. Greater length of cable? A. Greater length of cable, and on the crane you have to have a greater length of screw or worm.

Q. The length of the screw or worm has nothing to do with the length the crane travels? A. Not lengthwise; I am talking about the lift that obtains in this case; the pit. 10

Q. The Ontario Power Company have, as I understand it, a 35-foot lift? A. Yes.

Q. Same lift as you have got? A. That is right.

Q. They use the worm and gear type of safety device? A. Yes.

Q. Have you ever known it to fail? A. Not in the Ontario, but I have—

Q. With the Ontario Power Company you have never known it to fail, and they use it under exactly the same circumstances as you are using your crane? A. That is correct. 20

Q. If they can use it and use it without disadvantage in their operations, why cannot you do so? A. We have two cranes in the power-house—

Q. I did not ask that. I am speaking of this one in the forebay? A. That's the reason we can't use it.

Q. Why? A. Use the same operator on the same two cranes makes them careless in one and not in the other.

Q. The lift in your power-house is 35 feet? A. No, we have 200 feet.

Q. How is that? A. Go down in the pit.

Q. Both cranes? A. Yes. 30

Q. You should have separate operators for the three different cranes? A. I suppose so.

Q. A little thing like expense would not be considered by a big company like the Power Company, where men's lives are at stake? A. Not at all.

Q. We can eliminate that, the expense of the extra men; if thereby you are going to increase the safety of the plant to the employees the cost of extra men would not be a consideration then? A. You have no work to do.

Q. Just the one question. Would the pay of the extra men be considered by your company if you thought thereby you were going to increase the safety to your employees? A. No, sir. 40

Q. Where else have you worked with cranes? A. Toronto Power Company.

Q. Have they safety devices on their cranes? A. They have not.

Q. That is your own company? A. Yes.

Q. Where else besides that; you had seven years' experience? A. Most of it at the Toronto Power Company; I have had some experience outside.

- Q. Where else? A. The two years I just told you of, the Ontario.
- Q. Where else? A. Chalcraft.
- Q. Where is that? A. Niagara Falls.
- Q. Is that a big plant or little? A. Big plant.
- Q. Did they have travelling electric cranes there? A. Yes.
- Q. Equipped with safety devices? A. Yes.
- Q. What kind? A. Make and break type.
- Q. Operating under the same conditions as your cranes? A. Yes, sir.
- Q. So that in your whole seven years' experience you only worked at
 10 one place where they did not have the safety devices? A. I only worked at one place.
- Q. And that is the defendant company? A. That is right.
- Q. You were not applying your experience for the benefit of your employers apparently? A. No, I wasn't; not to the extent I would put on cut-offs; I don't think they are reliable.
- Q. That was your opinion, was not it? A. I have saw them fail.
- Q. Have you ever seen them work? A. Yes.
- Q. If they only worked once in three times would not that be a factor of safety? A. Might act the other way.
- 20 Q. If they only worked once in three times would not that be a factor of safety. A. For the once, yes.
- Q. Have you seen them fail frequently or work frequently? A. As a general rule they could not work them.
- Q. They could not work them? A. The crane operator stops it before he comes to the check.
- Q. That is your idea of the crane operator? A. That is the whole tendency.
- Q. The modern mechanical practice is to provide an appliance that will overcome the element of error in the man who is operating it, is not it?
 30 A. Yes.
- Q. You see that in the operation of railways, and in all big undertakings, appliances that make for safety? A. As far as I know.
- Q. Men are all the time scheming, and big companies are all the time looking for safety devices that will correct mistakes men are liable to make; that is right, isn't it? A. It is the same everywhere.
- Q. You would offset that tendency of modern times, do away with all these safety devices, because thereby you think you would make the man more careful—that is your idea? A. Yes.
- Q. In other words, you are at variance with the whole trend of modern
 40 inventions in safety appliances? A. I am not alone.
- Q. I am not asking that. That is your position? A. Individually, yes.
- Q. Individually, that is your position? A. Yes.
- Q. And the directors of this big, modern concern are taking their ideas and advice from you on these points? A. That is right.
- Q. And following it? A. Yes.

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—
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—
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—
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Q. So that if you had your way there would not be a safety device or appliance in the whole establishment? A. Not of that type.

Q. Or of any other type? A. Yes, we have lots of automatic—

Q. You would not have them, because thereby you are taking the responsibility of being careful off the workmen's shoulders? A. We do have them.

Q. That is against your ideas of it? A. No, it is not.

Q. You just a minute ago said it was? A. Oh, cranes—that's not everything, like you said.

Q. So that you draw a distinction between the man who is operating a crane and the man who is operating a steam railway, or steam engine, or something else? A. In this particular instance; I have nothing to do with steam engines. 10

Q. You draw a distinction between men operating a crane and some other mechanical contrivance? A. I draw a distinction just to that extent.

Q. Did you ever say you did not know there were such mechanical contrivances as cut-outs; did not know of them, and never heard tell of them? A. I don't think I ever said I didn't know about them; I might have said I wasn't very much in touch with them.

Q. You remember giving evidence at the Coroner's inquest? A. Yes, 20
sir.

Q. You remember being asked the question was there any mechanical device for cutting off the current when it reaches a certain point? A. If I remember right, I knew of some, but they were not reliable.

Q. Your answer to that made at the Coroner's inquest is, No, sir? A. I am quite sure I made that statement.

Q. You say the reporter took down here in shorthand what is not the correct answer? A. It is possible.

HIS LORDSHIP: Is that in shorthand?

MR. MCCARTHY: Is that a sworn statement? I have the notes of the 30
Coroner's inquest here. Have you the Coroner's notes?

MR. PHELAN: Copy of them.

MR. MCCARTHY: Signed copy; signed by this man?

MR. PHELAN: Taken in shorthand.

MR. MCCARTHY: They are not taken in shorthand, not by the Coroner.

MR. PHELAN: Yes, at the Coroner's inquest. You apparently have not got what I have at all.

MR. MCCARTHY: I have the Coroner's statement.

MR. PHELAN: I beg your pardon, I am wrong about that. It was handed to me by the solicitor, supposed to be a verbatim statement. 40

MR. MCCARTHY: This was handed to me by the Coroner.

MR. PHELAN: Q. We will not bother whether we have got the notes here or not. Was it a fact you did say you did not know of any such contrivance? A. It is a fact I said I didn't know of any reliable contrivance.

Q. Although you did know of the contrivances being used at the two places where you had been employed? A. Yes.

Q. Do you know on occasions they had worked? A. I presume they have. I never noticed at any time. They didn't usually make them work. They have to come back; they have to go back—

Q. This block had fallen before the accident, had not it? A. Before the accident?

Q. Yes, on other occasions? A. Yes, I believe it did on one occasion, one other occasion.

Q. What caused it to fall that time, same kind of an accident? A. It is a long time ago.

10 Q. Yes, and you have had a crane there a long time, too; what caused it to fall on that occasion? A. I am not sure.

Q. Was it by coming in contact with the sheave—what do you call it? the block above? A. Equalizing block.

Q. Equalizing block above? A. Yes.

Q. So that it happened in the same way this accident happened? A. That is how it happened.

Q. As the result of the accident did you take any precautions to prevent it occurring again? A. We did.

Q. What? A. We went into the advisability of putting on the cut-off.

20 Q. You decided not to do anything? A. Decided not to do it, better off without it.

Q. So that you just left conditions in the same circumstances they were before the accident happened; you left the situation just the same? A. Yes.

Q. And took absolutely no means to prevent a repetition of the accident? A. We didn't think it advisable.

Q. You did not think it was advisable? A. The corporation—pardon me; the staff.

Q. The three of you together? A. Yes.

30 Q. Did the other two gentlemen who formed the staff along with you have any experience in the operation of cranes? A. Had they any experience?

Q. Yes. A. I could not say.

Q. You were the only crane expert in the conference, were not you? A. I think not.

Q. There were only the three of you? A. These men have had a wide scope of experience.

Q. I asked the question, did either one of them to your knowledge have experience with cranes? A. I don't know.

40 Q. So that as far as you know you were the only crane expert in the conference? A. I don't know that I was.

Q. We will take your answer in that way. Naturally, being the mechanical superintendent, the other two men would take their information from you—naturally? A. To a certain extent.

Q. The whole investigation or conference you had resulted in your telling the others what your opinion was about safety devices—that is correct? A. I told them what I thought.

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Q. That is all that occurred at the conference? A. We had other people express their opinion.

Q. You were the expert on whom the other two members relied for advice and information on that point—that is correct? A. Yes, sir.

Q. I suppose your recommendation would largely determine what their action would be? A. Yes.

Q. You had well-defined and well-formed ideas against the use of any appliances of this kind? A. For reasons, yes.

Q. Whether for reasons or not you had them. Did you make a personal investigation at that time of any cranes that were working, or examination of any safety devices that were in operation? A. Yes. 10

Q. Where? A. Hydraulic Power Company.

Q. As the result of your investigation did you find the devices did work? A. I found out from the superintendent they did not work.

Q. Never worked? A. On one particular occasion broke the cable, same as this.

Q. Did you find out they did work on other occasions? A. I didn't find out they worked.

Q. You went there to get information to prove they would not work? A. To find out if they were a good thing to put on the crane. 20

Q. You found out one occasion on which they did not work? A. More than one; I am citing one. 1

Q. Did you enquire about occasions on which they did work? A. Yes.

Q. Were you told they had worked on other occasions? A. I was told they worked, but you have to trip them back each and every time, and there is liability of leaving them out.

Q. They had worked? A. Yes.

Q. What type is that? A. Make and Break type.

Q. Did you investigate the worm gear type? A. Yes.

Q. Where? A. Ontario Power Company. 30

Q. Same company? A. Ontario Power Company.

Q. Did it perform its functions there? A. As far as I know.

Q. Notwithstanding that information you reported against the use of it? A. I found out—

Q. Notwithstanding that information you reported against the use of it? A. There is two other places—

Q. Never mind; you did find one place it did work? A. At one place.

Q. And were a factor of safety at that place? A. On a 35 foot lift.

Q. Which were the same conditions you had in your own plant—correct? A. Yes. 40

Q. In those places you worked they employed signalmen—is that correct?—outside of the Toronto Power Company, where you are now? A. Not at the Ontario Power Company.

Q. Where did they employ a signalman? A. I don't know any place where they employ an official signalman except on derrick work.

Q. Your experience is limited to three places? A. Yes.

Q. Your present employment, where you have been for five years? A. Yes.

Q. And two other places? A. Yes.

Q. If you had employed a signalman as part of your system whose duty it would be to control and watch the operation of these blocks, and he performed his duty, could this accident have happened? A. Perhaps not.

10 Q. Listen to the question: If you had employed a signalman as part of your system whose duty it was to control the operation of the blocks and to watch them and that man had done his duty, could the accident have happened? That question can be answered Yes or No? A. You are depending on a man again.

Q. I am not asking that. I say if that man had done his duty, could the accident have happened? A. If the crane operator done his duty.

Q. I did not ask that. Why do you hedge? Answer the question I asked. If you employed such a man and he had done his duty, could the accident have happened? A. That is a hard thing to say.

20 Q. I understand you will not answer the question? A. Not exactly.

Q. If he had done his duty how could the accident have happened—let me put it that way. If you had such a signalman and he had performed his duty, how could the accident have happened? A. The crane operator might not have been looking.

Q. Could he not shout to him? A. I presume he could. It is a matter of seconds when the hooks get up near the drum.

Q. 2½ minutes it takes the small hook to go up? A. Yes.

Q. Could not he have seen the situation long enough before the accident happened to have warned that craneman? A. If he had been looking at him.

30 Q. It would be the craneman's duty to be looking at him? A. Yes.

Q. Let us suppose the craneman and the signalman both did their duty; if there had been a signalman there could this accident have happened?

MR. MCCARTHY: Q. If they both did their duty? A. If they both did their duty?

MR. PHELAN: Q. Yes? A. I don't think it could.

Q. Even if the signalman was looking the other way his attention could be attracted by shouting? A. I suppose.

40 Q. In any event the signalman would be there to see that the crane was getting into a position of danger and it would be his duty to take some action to prevent it going any further—that is right? A. Yes.

Q. Would not it have been safer if you had employed a system of that kind? A. No, I think it would not.

Q. Why? A. I think the foreman is the man to give the signal.

Q. The foreman has many other duties to perform as well as giving signals? A. He is the man responsible.

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Q. He has many other duties to perform? A. Yes.

Q. The foreman in this case had many other duties to perform? A.
Only the one.

Q. He had to get these blocks out of the road? A. Which blocks?

Q. The stop logs? A. He has men there to do that; he doesn't have to.

Q. He has to see that the men do it? A. He don't have to do much to
see that.

Q. I know, but that is another duty he has? A. Looking at them.

Q. And seeing they are doing their work and doing it in a proper way?

A. If he asks a man to do it, it doesn't require much attention after that. 10

Q. He has other duties that take his attention away from the raising
and lowering of the blocks? A. No, I don't think so.

Q. Do you say that it is the duty of the foreman operator to give his
whole time and attention to the raising and lowering of the blocks from the
moment they start until the operation is finished? A. The way they usually
handle it—

Q. Answer the question? A. Let me have it again.

Q. Do you say that it is the duty of the foreman operator—

MR. MCCARTHY: Who is that?

MR. PHELAN: Q. The foreman rigger, when he is doing the work of 20
signalman also—do you say that it is his duty to watch the operation of
these blocks from the time they start until they stop? A. Not necessarily
so; if the hooks are going up he wouldn't need to watch them.

Q. If you had a signalman there he would have the duty on his shoul-
ders to watch them? A. If he watched them.

Q. It is the signalman's duty to watch them? A. Yes.

Q. The foreman operator doesn't have to do that? A. The foreman
rigger?

Q. Yes? A. It is not necessary when the hooks are going up.

Q. Because he has other work to do, and has to get some one to do it? 30
A. How is that?

Q. The foreman rigger? A. He lays the work out for the others.

Q. When the blocks are going up or coming down, what is he supposed
to be doing? A. With a load on?

Q. With or without load? A. With a load he is supposed to watch
the hooks.

Q. Without a load? A. He is not supposed to have anything to do
with the hooks after they are cut loose.

Q. If the hooks are empty he has nothing to do with them, going up
or coming down? A. Coming down he has to watch out for the right 40
level.

Q. When he is watching it for the right level the craneman can give his
whole attention to the hook going up? A. Yes.

Q. That is your idea of how the work should be done? A. Yes, sir.

Q. When the hook is coming down the foreman rigger relieves the

craneman of any responsibility in connection with the hook? A. Not necessarily relieve him of all responsibility; they should work together.

Q. Whose duty is it to control that hook coming down? A. Control it?

Q. Yes? A. Only one man can control it.

Q. I don't mean the mechanical control, I mean control of the operation. Whose duty is it to control the operation when the hook is coming down, the craneman or the foreman rigger? A. The foreman rigger.

Q. If it is his duty it is not the craneman's? A. It is the craneman's to take the signal from him on the way down at the right point.

10 Q. The foreman rigger must watch it all the whole way? A. Yes, watch it all the way down; it is very slow in travelling.

Q. The craneman can rely upon the foreman rigger looking after that part of the work, or should rely upon him? A. Yes, sir.

Q. You did sometimes employ a signalman there? A. No, not regularly.

Q. You did sometimes? A. How do you mean?—employ him specially?

Q. You heard my question? A. I would like to have it again; I can't understand.

20 Q. You did sometimes employ a signalman? A. Only for work over the pit; a man can't see the hooks when he is down in the hole.

Q. The operator cannot see them? A. They are down 150 feet; signal with a light from below.

Q. So that you never did use a signalman in connection with the crane in the forebay? A. No; you can see everything out there.

Q. You do not think a signalman for that part of the work was a necessary part of the system or the work? A. Not where you are working on one floor.

30 Q. Out there in the forebay no signalman was ever employed or used? A. No.

Q. Working in the pit there were some different considerations arising? A. Oh, yes; you have to have a man there.

Q. The crane operator of course in this case took his orders—or should have taken them—from Sheppard? A. Yes.

Q. He was the foreman over the crane operator and over the riggers? A. Correct.

Q. And you say it was Sheppard's duty as foreman to have watched that big block coming down just before the accident? A. Yes.

40 Q. If there was any danger or any possibility of danger it was his duty to have signaled to the craneman? A. Stop the big hook.

Q. So that under those circumstances the craneman could have given his attention to the little hook going up? A. Yes.

Q. If there had been a signalman there the signalman would have had his eye on both hooks? A. Yes, assuming he was doing his duty.

Q. If he was doing his duty could he tell from the conditions when

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RECORD. the small hook got up within 5 or 6 feet of the pulley there was likely to be an accident? A. Should be able, if he could see.

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RE-EXAMINED. By MR. MCCARTHY:

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Q. First let me say: When you worked at the Ontario Power Company, were there any devices used at all, safety devices? A. I just don't remember over there, whether there were or not.

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Q. When did you first hear of the devices being used at the Ontario Power Company? A. Something like two years ago, or a year ago; it was something new then.

Q. They were new then? A. Yes. 10

Q. In Chalcraft's were there safety devices used there when you were there? A. They were.

Q. What kind? A. The Make and Break type.

Q. Where? A. Where do you mean—on the cranes?

Q. On the similar crane to yours? A. Yes.

Q. With two hooks? A. Yes.

Q. How did they work? They failed in several instances, probably four or five, spread over a number of years.

Q. Over several years? A. Yes.

Q. You say that you had an accident in the power house. How long ago was it the hook dropped? A. I would say it was two years ago. 20

Q. And that is the only two accidents you have ever had since you were there? A. As far as I know.

Q. You would know if an accident took place? A. I should think so.

Q. You say it was your first accident when the hook dropped three or four years ago—the first accident? A. At the Toronto?

Q. Yes. A. Two years or two and a half years.

Q. As soon as that hook dropped—which is the first time you ever knew of a hook dropping—you say you had the consultation and you then stated you went into the question of safety devices after the accident and had the conference with the Electrical Engineer and the Chief Engineer, and you stated you were the only crane expert? A. I don't think so. 30

Q. You left the impression you were? A. I said I didn't know if the other fellows were crane experts or not.

Q. Did you mean to say in that consultation you were the only one who knew anything about cranes? A. I know very well they know something about cranes; they are men of broad scope of experience.

Q. You left the impression you were the only one of these three who knew anything about cranes? A. I did not wish to convey any such meaning. 40

Q. That is what you said? A. I was forced to let it go.

Q. How do you mean? A. I couldn't get a word in edgeways.

Q. I do not think that is fair. The jury are not taking what my learned friend says, but what you say. I want to know what is the fact in regard

to the other two men? A. They are very learned, mechanically and electrically. I daresay each one of them is in a position—

MR. PHELAN: Only a guess.

MR. MCCARTHY: Q. When you daresay—? A. I know for a fact. I don't want to say anything that is not true.

Q. You said daresay, but as a matter of fact you know? A. Figure of speech only.

Q. Be careful what you say. You are on oath; you have to be careful. A. Alright.

10 Q. What did you mean when you left the impression you were the only expert of these three on the question of cranes or electrical devices to control cranes? A. I didn't intend to impress that way; that is all I can say now.

HIS LORDSHIP: That is the impression you gave. It is the impression I got.

MR. MCCARTHY: It is certainly the impression I got. Q. If you were the only one of the three, what was the object in calling in the other two? A. From the electrical standpoint; there is the electrical end as well as the mechanical. There are electrical cut-outs and mechanical cut-outs.

Q. Who is the Electrical Engineer? A. Mr. Burrows.

20 Q. What I want to get at: You left my mind in doubt, and apparently His Lordship's mind as well—what part did these men take in the discussion? A. Discussed very fluently the electrical cut-outs, and I discussed mechanical cut-outs.

Q. Can you tell me how they got any information as to how these things worked? Had he collected any data from which he could form an opinion as to whether electrical cut-outs worked, or did not work—the Electrical Engineer? A. He was at two places where they had attempted to use them.

MR. PHELAN: He cannot answer that question.

30 MR. MCCARTHY: Prior to this consultation did he collect any information from which you three when you got together on this subject were able to get any guidance at all as to the efficiency of electrical cut-outs? The question is very simple. A. I can't say to that; he talked very fluently on it.

Q. He may have talked very fluently; had he investigated the subject at all before the consultation? A. I can't tell you the places he went before.

Q. I did not ask that; I asked did he investigate? A. I don't know.

Q. You don't know whether he did or not? A. No.

40 Q. You don't know what benefit he was to you on the consultation; was he able to tell you anything about them? A. Certainly.

Q. Please listen. I am trying to get what information you had, and what the object of this consultation was. If a man talked fluently without knowing anything about it that would not be very much good to you. What I want to get is what he did?

MR. PHELAN: Very leading.

HIS LORDSHIP: I do not see how much further he can go.

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MR. PHELAN: He has already said he does not know.

MR. MCCARTHY: Q. Do you know whether they gathered any information at any time prior to the consultation? A. I don't think they did; I did.

Q. You don't know whether they did or not? A. No.

Q. You do not know whether Mr. Boyd did; he was the chief engineer? A. Mr. Boyd didn't tell me anything at the time.

HIS LORDSHIP: Q. Was he one of the three at the conference? A. Yes.

MR. MCCARTHY: Q. You don't know what he did? A. He never told me what he done. I reported to him. 10

Q. He did not tell you what he did? A. No.

Q. As the result of the conference between the three of you, you determined not to put them in? A. That is the idea.

Q. To go into the result of your investigations. You told us in the first place you investigated the Ontario Power Company plant? A. Yes.

Q. What did you find as the result of your investigations there, as regards the mechanical cut-offs?

MR. PHELAN: All been brought out.

MR. MCCARTHY: You took it to a certain stage and dropped it. I am going on. 20

WITNESS: As far as I know, the Ontario Power House—

MR. MCCARTHY: Q. I want to get the result of your investigation? A. They haven't had an accident I know of at the Ontario Power Company.

Q. How long had they been in operation at the time you made your investigation? A. Probably a year before.

Q. What class of crane were they? A. Niles electrical crane.

Q. What is that; one or two hooks? A. Two hooks.

Q. Operated in the same manner as yours? A. Yes, same manner.

Q. Had they a signalman there? A. No official signalman.

Q. Just used the same system you did, with the foreman? A. Yes, sir. 30

Q. Did you stop there; did you investigate any other place besides the Ontario Power Company? A. I investigated Chalcrafts.

Q. What devices had they there? A. Mr. Scott told me they had a Make and Break on there, and it failed several times.

HIS LORDSHIP: What was the result of your investigations?

MR. MCCARTHY: Q. Yes, what was the result of your investigations?

MR. PHELAN: He said what Scott told him.

HIS LORDSHIP: He cannot give any conversations; only the result.

MR. MCCARTHY: My learned friend opened up the question of his investigations, and I want to go into it fully. 40

HIS LORDSHIP: Let Mr. McCarthy find out how long ago the Chalcraft investigation was.

MR. MCCARTHY: Q. What was the nature of your investigation into the Chalcraft? A. I consulted with the heads.

Q. Who were the heads? A. Mr. Scott and Mr. Lea; they told me—

MR. PHELAN: I object.

HIS LORDSHIP: Q. Did you make any investigation yourself? A. They wouldn't permit me to go up on the machines.

MR. PHELAN: That closes it.

MR. MCCARTHY: My learned friend took him into the Ontario Power Company and dropped him there, and I want to know if he continued his investigations, and what the nature of them were, and if these investigations involved the asking of information from the heads of other companies as to how these things worked, I am entitled to get it.

MR. PHELAN: Your Lordship has my objection noted.

10 HIS LORDSHIP: I will see what I have in my notes about it.

MR. PHELAN: Your Lordship will remember the only thing I asked about was the instances he had personal experience with, where he had been employed.

MR. MCCARTHY: My learned friend asked him as the result of the accident had he investigated. I took it down as he said it, and it is down in the notes.

HIS LORDSHIP: The reporter will turn it up. —Reporter reads questions and answers transcribed on page 116, lines 14 to 21 inclusive.

20 MR. MCCARTHY: Q. You did not say anything about the Hydraulic Power Company; you said you investigated at the Ontario and Chalcraft's? A. That is the Hydraulic Power Company.

Q. You are using different names?

HIS LORDSHIP: Using two names for the one company is rather confusing.

MR. MCCARTHY: Q. I got confused the same as his Lordship? A. It is my mistake; goes under both names.

HIS LORDSHIP: I have the other name used in the re-examination.

30 MR. MCCARTHY: Q. What was the result of getting that information from the Hydraulic Power Company? A. Mr. Lea and Mr. Scott told me the devices failed several times, as did their foreman rigger, Mr. Miller, and Mr. Crowley told me they had failed four or five times, two or three only in the last three or four years—and that is saying considerable.

Q. In addition to that did you make any further investigation? A. Not at that time, no.

Q. Not at that time? A. Not at that time.

Q. You have made further investigations since? A. Yes.

Q. Did you report the result of your investigations to Mr. Boyd and to the chief engineer? A. Yes.

40 Q. Which resulted in the refusal to recommend the devices in question? A. Yes, personally.

HIS LORDSHIP: He said "personally."

MR. MCCARTHY: Q. What did you mean? A. I presume—I don't presume at all—I know—they had ideas along the same lines as myself, that they were better off than on.

Q. You said it was personally for that reason the conference did not recommend them? A. Yes.

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Q. You said personally; what did you mean by that? A. Well—

Q. You corrected yourself just now and said personally? A. Well, it was for that reason; if the personal is in doubt there—

Q. I cannot put words into your mouth; I want to know what you meant when you said personally. His Lordship immediately called attention to the fact that you said personally? A. I have little doubt in my mind—in fact, no doubt—but what Mr. Boyd and Mr. Burrows both had ideas on automatic cut-outs without being entirely guided by me. As the result of my investigations we got together and decided not to put them in.

Q. You meant by personally, personally as the result of your investigations? 10

MR. PHELAN: I object. Let him tell himself; it may be more difficult—but it will be a better result.

MR. MCCARTHY: Q. You answered a question just now in this way: I asked the question, as the result of the investigation you three decided not to instal the cut-outs; you said Yes, then hesitated, and said personally? A. I believe that is part of the question—on my advice; you inserted that.

Q. Only personally on your advice? A. That is where the personally came in. I didn't mean to say—

Q. Did you investigate any other power-house besides the Ontario Power Company, where you found they had not had any accidents, and Chalcrafts, where you found they had? Did you collect any other information? A. I found out they didn't use them at the Niagara Falls Power Company. 20

HIS LORDSHIP: Q. What is that? A. Niagara Falls branch of the Canadian Niagara.

MR. MCCARTHY: Q. You found out they did not use them there? A. Didn't use them.

Q. Did you go into it any deeper than simply finding out they did not use them? A. I found out they didn't think they needed them. I talked to Mr. Hamilton—Mr. Murphy—and he told me he didn't think they needed them on the cranes at all. Didn't think they were reliable, the way he put it—he would rather have them off. 30

Q. That is three companies. Did you try any one else? A. I don't think so; it is quite a while ago.

Q. Did you investigate the Canadian Niagara Company? A. Only on enquiry from the outside I found out they did not use them. I found out from Mr. Forgan—

MR. PHELAN: This is opening up very wide limits of hearsay evidence.

HIS LORDSHIP: His whole evidence is that they did not use them. 40

MR. MCCARTHY: Q. Did you find out anything about the Canadian Niagara? A. Mr. Forgan told me the man who put the cranes in—

HIS LORDSHIP: You will stop there. There will be no end of this.

MR. MCCARTHY: I want to get the full result of his investigations. We

have got to take the responsibility of acting as this man acted, and we want to know if he investigated fully.

HIS LORDSHIP: He made enquiries at other places.

MR. MCCARTHY: Q. I don't want to go into what Mr. Forgan said. The questions are simple, and if you will pay attention and answer them concisely. Did you make any enquiries as to the Canadian Power Company? A. Yes.

Q. What was the result? A. I found out they took them off.

Q. Then they must have had them on? A. They had them on and took 10 them off. I thought you wanted to know where I got the information.

Q. No, I do not. Does that complete the result of your investigations? A. Yes.

Q. Canadian Niagara, Niagara Falls Power Company, Chalcrafts or the Hydraulic, and the Ontario Power Company? A. Yes.

MR. PHELAN: Would your Lordship permit me to ask one question arising out of the re-examination?

HIS LORDSHIP: Very well.

MR. PHELAN: Q. What type of devices were used on the two occasions you were informed they had failed, make and break or worm and gear? 20 A. Make and break.

Q. Did you find any occasion the worm and gear had failed? A. The only place I ever saw them was at the Ontario.

Q. Did you find any occasion on which the worm and gear had failed, is the question? A. No.

HIS LORDSHIP: Q. Tell me the length of time it is since you made the investigation at the Hydraulic? A. That would be some years ago; I should say two and a half years.

JOHN SCHWARTZ, Sworn. Examined by MR. MCCARTHY:

Q. What is your occupation? A. In charge of the mechanical work 30 at the Niagara Falls Power Company.

Q. How long have you been there? A. Three years.

Q. What experience had you before that time? A. Before that I was four and one-half years chief engineer for the Sturgis Department Ludlow Valve Manufacturing Company, Troy, New York.

Q. Before that? A. I was three and a half years with the General Electric Company.

Q. In the States? A. Yes, sir, in Schenectady.

Q. That is the head office, is it? A. Yes.

Q. What experience have you had, stretching over how many years, in 40 electrical appliances? A. Well, in electrical appliances, four and a half years.

Q. Mechanical? A. Mechanical appliances, about twenty-one years.

Q. You are at present the head of the Niagara Falls Company, the mechanical head? A. Yes, mechanical construction.

RECORD

*In the
Supreme
Court of
Ontario.*

No. 6
Evidence
at Trial.

Maurice F.
McCarthy,
Re-Ex-
amination.

—continued

No. 6
Evidence
at Trial.

John
Schwartz,
Examina-
tion.

RECORD.

*In the
Supreme
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No. 6
Evidence
at Trial.

John
Schwartz,
Examina-
tion.

—continued

Q. What experience have you had with electric cranes? A. Well, I used electric cranes, practically all kinds of makes—Fairbanks, Canada Foundry cranes, and so on—overhead travelling cranes, box cranes, and so on, and some directly motor driven without any controllers, which I found they are the best, clutch operated.

Q. You have had a good deal of experience with all different kinds of cranes? A. Yes, sir.

Q. Are you familiar with the type of crane which is used by the Toronto Power Company, Electrical Development Company? A. I know the Morgan crane, but I have never seen the Toronto Power Company's crane. 10

Q. I suppose there is not any great difference between any of these cranes which are operated by a man with controllers in a cage? A. No, sir; they are worked identically.

Q. You are familiar with the type? A. Yes, sir.

Q. What do you say as to the efficiency of that type of crane? A. Well, these controller operated cranes is the general principle nowadays. It is used in cranes; I don't say it is the best; it is the generally used.

HIS LORDSHIP: You mean the appliance used here is in general use?

MR. McCARTHY: Yes; crane operated by controllers is in general use.

Q. Opinions differ as to which is the best crane? A. Yes, sir. 20

Q. We are told this crane has no mechanical means of cutting off the power when the blocks rise up to a certain distance from the drum. Are you familiar with the type of crane, or appliances which we are told are used, some mechanical, some electrical, in reference to cutting off? A. I am familiar with electrical cut-outs in use, because we use two systems ourselves.

Q. In your power-house at Niagara Falls? A. Yes.

Q. What electrical systems do you use? A. One is screw gear type, and the other is the make and break type.

Q. Where do you use them? A. The screw type is used in the electric hoist made by the Otis Elevator Company, and the make and break type is used on the Niles crane in the machine shop. 30

Q. How do you find them to work? A. The two occasions we had to see the mechanism work on the machine shop crane it didn't work.

Q. You mean the occasion when the operator made it go too far? A. I mean the two times when the operator did not pay attention; then the mechanism should have worked; should have operated, and it didn't operate.

Q. It didn't work? A. No. On the electric hoist made by the Otis elevator people we have trouble right along. It worked satisfactorily once in a while; you may say two or three times out of a hundred. 40

Q. As a matter of fact, do you know of any device that is an efficient device that is used to-day on cranes of this type? A. Not that I know of.

Q. Have you investigated the subject at all to see whether there are any? A. Yes.

Q. You have not been able to find any that is efficient? A. No, sir; I don't know of any that are reliable.

Q. Have you some cranes which operate with the cut-offs at all? A. Yes. RECORD.

Q. Whereabouts? A. Two 50-ton travelling cranes in number one and two power-houses. *In the
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Q. Travelling cranes? A. Yes.

Q. Those are the cranes which go up and down? A. Yes.

Q. What is your opinion as to the advisability of installing an electrical device, or any device which would form a supposed safety appliance in the case of a crane—? A. You will pardon me—do you refer to these two
10 cranes?

Q. Yes, to these two cranes, say? A. The trouble is there we have a 200-foot lift, so that it would not be possible to use it—not to my knowledge of any modern inventions so far.

Q. These devices would not be applicable to cranes for such long lifts? A. Not the devices I know of in the market nowadays.

Q. They are only applicable to short lifts? A. To short lifts; yes, sir.

Q. Take the case which we have here, where the crane was operating with a 35-foot or 40-foot lift, what do you say as to the advisability of installing safety devices in a crane of that kind, with the two hooks? A. Well,
20 I might say that on the small hook the possibility might be there to use it, but with the general appliances on the market nowadays, and with the records I don't know it is of any use. I wouldn't recommend it.

Q. You would not recommend it? No, sir, I wouldn't recommend the present arrangement.

Q. Why? A. Because they are defective.

Q. Because they are defective? A. Yes, sir; they are not reliable.

Q. How would it affect the safety—speaking from the employee's standpoint—how would that affect the safety or non-safety of the employee? A. The craneman wouldn't look at all at the hook, would simply
30 rely on the automatic cut-out.

Q. If the automatic device operates when the hook gets a certain height the craneman would be too liable to simply rely on the automatic device operating and not watch himself? A. Surely; he wouldn't watch the hook at all. He would say: I will lower the hook down, this one will cut out itself.

Q. You say that unless you had an absolutely reliable device you would be opposed to putting them in? A. Certainly.

Q. You are opposed to it until something more reliable comes on the market than you have been able to find to-day? A. Yes, sir.

40 CROSS-EXAMINED: By MR. PHELAN:

Q. So that your attitude is just the same as Mr. McCarthy's on the question of safety appliances? A. I want the best; something absolutely positive.

Q. You told us a moment ago you wouldn't use it because it would encourage the operator to use less care? A. Yes.

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Evidence
at Trial.
John
Schwartz,
Cross-Ex-
amination.

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No. 6
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John
Schwartz,
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amination.
—continued

Q. So that in the same manner you would discredit all devices with which machines are equipped? A. Provided they are good.

Q. That would work every time? A. Yes.

Q. The only kind of automatic device or safety device you would equip machinery with under your control would be one that is absolutely certain to work every time? A. That is one possibility.

Q. All these things are liable to go wrong. Just answer the question: Is the only mechanical appliance you would use on any machinery—? A. The best there is.

Q. Is the only one which you would use the one which is absolutely impossible to fail? A. Yes, sir. 10

Q. That is the only one you would use? A. To work; that would be absolutely positive to work.

Q. If there was the slightest element of uncertainty about it, no matter how slight, you would not use it? A. Within human possibility.

Q. Of course that covers a pretty wide field, doesn't it, within human possibility? A. Everything is human.

Q. Any safety appliance is human, is not it—it is a human contrivance? A. Yes.

Q. Then there is not an absolutely certain safety contrivance on the market, because they are all human? A. They are within probably 10 per cent., or 1-10th. 20

Q. That is the only kind you would suggest using? A. The very best.

Q. All others would make the operator less careful? A. Yes.

Q. You have how many cranes equipped with these safety appliances?
A. Two; one is a hoist and one is a crane. One is a lift and one is a crane.

Q. Which one is equipped with the worm and gear type? A. The lift.

Q. Operating over what height? A. About 100 feet.

Q. If that operation was confined to 35 feet would it be more liable to give satisfaction? A. Yes, sir. 30

Q. Have you ever known the worm and gear type to fail on a lift of 35 feet or thereabouts? A. Not that I have seen it.

Q. Have you ever known it to fail? A. I have heard of it.

Q. On a 35-foot lift. A. About a 40-foot lift.

Q. You have never known or heard of it failing on anything less than a 40-foot lift? A. 35 or 40 feet—that is the lift I am speaking about.

Q. You have never known or heard of it fail on anything less than that? A. Not the worm and gear type.

Q. You have heard of only one occasion, I assume, where it failed on a 35 or 40-foot lift? A. About five times. 40

Q. On the same machine? A. No, sir.

Q. Different machine? A. Yes.

Q. Do you know the circumstances of each occasion, what caused it to fail? A. I think I can.

Q. Do you know that of your own knowledge? A. I know it out of two cases positive.

- Q. Of your own knowledge, the worm and gear type? A. The worm and gear type failed on five places—even on six—I know of five positive.
- Q. On a 35 or 40-foot lift? A. Even less than that.
- Q. You stated a minute ago you did not know of any occasion where it failed within 35 feet? A. I said within a limit of 35 or 40 feet. These two places, I know it failed within 20 feet, and the reason I know why.
- Q. On the Make and Break type, will that work at 35 and 40 feet much more satisfactorily than at a greater height? A. Both have the same failures, the same causes.
- 10 Q. Both have the same causes of failure? A. Yes, if they do fail usually in my experience they are the same performance of the machinery, due to the failure of these safety devices. Both of them started the machine on the same operation, understand, and caused the accident to happen.
- Q. What did it do? A. The failure of the safety devices brought the same performance into the machine, into the motors, thereby wrecking the crane, or the pieces hanging on the crane.
- Q. Did it allow the block to fall? A. Certainly, would allow the block to fall—do you mean the screw type?
- Q. Yes, we are speaking of that? A. It would allow the block to fall
- 20 in our machine shop twice, and the cast used to fall two or three times.
- Q. That is on a long lift? A. No; the block fell, that was about an 18 or 20 foot lift.
- Q. That is with the worm and gear type? A. Yes.
- Q. There is a long cable on that lift, even if you are only using it on an 18 or 20 foot height? A. No, sir.
- Q. Is not there a longer cable on it? A. No, sir.
- Q. What do you use the lift for; I thought you said a minute ago you used it for a 200 foot lift? A. That is in our own power house; I am speaking of five other different cases. We have no lift with a cable 15 feet with
- 30 the make and break type there.
- Q. What about the use of a signalman? A. A signalman we use in the power house for long lifts where the rigger boss cannot give signals personally.
- Q. Would not it be safer to have a signalman on all lifts who would have nothing else to do except watch the operation of the blocks? A. Then you would need two signalmen.
- Q. Why would you need two signalmen? A. Because one would have to watch the rigger boss for his orders and the other man—I think it is a practical impossibility for one man.
- 40 Q. Could not the orders be given to the signalman verbally by the rigger boss? A. No, not very well. Because the noise of the machinery is there and he might misunderstand the orders to a very great extent. It happens now every day.
- Q. The signalman would have to see his orders before he put the crane in operation, if he was relying on signals? A. He has to watch the rigger boss.

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—
*In the
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—
 No. 6
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—
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John
Schwartz,
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—continued

Q. He has to find out what the rigger boss wants before the crane starts to operate? A. Yes.

Q. After the crane starts to operate the signalman has nothing to do except watch the two blocks? A. Yes.

Q. The signalman gets his orders from the rigger boss? A. Yes.

Q. He has got nothing to do after he transmits the orders except watch the two blocks? A. Yes.

Q. Would not that be a safer system, if you had a signalman with nothing else to do? A. Yes and no.

Q. What do you mean by yes and no? A. The signalman after he gets his orders from the rigger boss can't pay attention to two hooks. 10

Q. The signalman gets his orders from the rigger boss what he wants and then the rigger boss is left out of consideration until that work is performed? A. Yes.

Q. If he has nothing else to do but watch the two blocks is not that a safer system? A. It is a safer system, provided he can watch two blocks.

Q. What is there to prevent him watching two blocks? A. Because he has to watch the hook coming down.

Q. It takes 2½ minutes—? A. There is the danger.

Q. It takes 2½ minutes to travel 35 feet, we are told? A. Yes sir. 20

Q. He has got to watch that one coming down and the other one going up—no very great difficulty about watching those two operations? A. No.

Q. If you employed a signalman to watch an operation of this kind it would be a safer system? A. Yes, it would.

Q. And the employment of a signalman under the circumstances in which this man was killed, Paskwan, if the signalman had done his duty, would have prevented the accident—that is right? A. I suppose so.

Q. Eh? A. It might have.

Q. Assuming the signalman did his duty, can you suggest any reason why it would not have prevented the accident? A. Inattention on his part. 30

Q. I am assuming—? A. Assuming he done his duty, the accident would not have happened.

Q. Assuming the signalman did his duty the accident would not have happened?

MR. MCCARTHY: What about the craneman and the others?

MR. PHELAN: I am talking about the signalman just now.

Q. Were you present on the occasions on which the safety devices failed to work in your plant? A. On four occasions.

Q. You were there yourself? A. I beg pardon—probably on 75 or 80 occasions. 40

Q. Which one failed? A. Both failed, the make and break failed only twice but the other 75 or 80 times.

Q. Taking this particular elevator I am speaking of—I am speaking of the worm and gear type? A. The effect is the same on both types, whichever system you use, the motor having attained a certain velocity it

will still in spite of the current being shut off continue to operate upon the crane, and if you are within 8 or 10 or 15 feet, the motor has that momentum and it means it will go up and it will break. That is all there is to it. No electric device will stop it.

Q. That means you are running your block at a very high speed? A. Not necessarily so; if there is a load on it it will not go so high.

Q. Supposing you are running your block up, how fast do you have to run your motor in order to give momentum enough to carry it 15 feet after the current cuts it off? A. I couldn't tell you the speed of the motor.

10 Q. How fast must your block be going up——? A. A 100 foot lift, makes that distance in about four minutes—25 feet a minute.

Q. That is two or three times as fast as——? A. Better than that—three minutes.

Q. That is about three times as fast as this Power Company's crane was working? A. Yes.

Q. The velocity of the motor was apparently the cause of the accident in the cases you have referred to? A. The motors always have velocity.

Q. That is very true. The velocity was the cause of the accident in the cases you have reference to? A. The momentum attained.

20 Q. Had the cable or pulley been travelling one-quarter the rate at which it was going, would the device have worked? A. Before I answer that question I would like to know the horse power of the motor.

Q. Take the motor in your own case? A. It wouldn't have worked, not within 10 feet.

Q. If you had set your safety device at 11 feet it would have worked? A. I say 10 feet. It might not have worked at 11 feet.

Q. You put 10 feet the limit. There is a certain limit to the velocity of your motor? A. No, sir, I can't set it that way. I can only set it 5 feet; that is all I can set it.

30 Q. It should not be brought within five feet of the crane? A. Five feet from the top.

Q. Is it very often you know of it breaking up overhead? A. Yes, sir, often.

Q. The whole point I want to make is this: The velocity of your motor was what caused the thing to fail to work? A. The momentum attained, certainly.

Q. So that on the slower operating machine used by the defendants, this device——?

MR. MCCARTHY: Who said it was a slower operating machine?

40 MR. PHELAN: I say so.

MR. MCCARTHY: That is not the point.

HIS LORDSHIP: Based on the rate they are going.

MR. MCCARTHY: That is not the motor, that may be the gear. Your motor may be travelling absolutely slow and the gear on top will regulate all that—sheaves and pulleys and everything.

RECORD.

*In the
Supreme
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Ontario.*

No. 6
Evidence
at Trial.

John
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—continued

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—continued

WITNESS: Slow speed motor is not used on any electric cranes I know of.

MR. PHELAN: Q. Will the velocity of the pulley give any indication of the rate at which the motor is moving? A. I could not say that unless I know the transmission.

Q. The whole trouble in your case was one of velocity? A. Yes, sir, the attained momentum.

Q. The conclusion is, I suppose—can you reduce the velocity, the attained momentum, of your motor? A. No, sir; we would reduce the power to such an extent the machine would be useless. 10

Q. The attained momentum is something which results from the speed at which you raise your pulley? A. Yes.

Q. The faster you raise your pulley the more momentum you have got in your motor? A. Undoubtedly.

Q. If you are only raising your block thirty-five feet in four minutes, as they were doing at the Toronto Power Company, they have only about one-third the speed on the motor you have on yours? A. Yes—not on the motor, on the hook. I don't know the transmission in between.

Q. Is it safe to conclude from that if the motors are the same, there are three chances for it to work on the slower machine to the one on the faster machine? A. I would have to know that. 20

Q. Just answer the question: Is the conclusion a correct one, there were three chances to work on the slower machine and one chance on the fast one? A. Undoubtedly.

Q. So that it would be three times as efficient a safety device on the defendants' motor, which is slower going than yours?

MR. MCCARTHY: I object.

MR. PHELAN: Q. Providing the pulley on your machine is moving three times as fast as the one on theirs? A. The pulley is independent of the motor. You mean the pulley where the hook hangs on? I don't know 30 the intermediate transmission.

Q. You do not know that? A. No.

Q. Can you draw any conclusions from it? A. No sir; I don't know.

HIS LORDSHIP: Q. A conclusion as to safety, having regard to the speed the hooks are going? A. If their motor runs one-third or one-quarter the speed of their motor I admit they would be safe.

MR. PHELAN: Q. Do you know anything about their motor? A. No, sir.

Q. Do you know the Sellers motor made by the Canada Foundry Company? A. No, sir, I don't know that; I know the Sellers cranes.

Q. The Canada Foundry Company make the same motor for all these 40 cranes? A. They buy the motors.

Q. You do not know what kind of motor it will be? A. No.

Q. I asked you a question before and apparently you misunderstood me: Will there be any variation between the speed at which the pulley is moving and the attained momentum of your motor; will that vary in differ-

ent machines according to the gearing of the machines? A. Undoubtedly it will.

Q. The slower motor you have the more chance there is for the safety devices to work? A. Yes, sir.

Q. What objection would there be to using a slower motor so as to avail yourselves of the efficiency of the safety devices? A. The only reason I can give is this: The biggest firms that manufacture cranes specially and do nothing else but make cranes, they all give a high-speed motor.

10 Q. Is the only object of that to give you a quicker operation? A. I think so.

Q. Then they are sacrificing safety to speed? A. Well, I don't think they consider safety; they consider the efficiency of the machine.

Q. The efficiency of the machine, and they do not consider safety—is that correct? A. I think so; that is what I would assume.

MR. MCCARTHY: That is the manufacturer.

MR. PHELAN: Of course.

Q. These safety devices on your own premises may have worked hundreds of times you know nothing about? A. The Make and Break type I installed myself on the crane.

20 Q. I just asked one question? A. They didn't work.

Q. They may have worked hundreds of times you did not know anything about? A. This one didn't.

Q. Never worked? A. No.

Q. This one you installed yourself? A. The Make and Break type; we bought the machine and I seen the machine going up. Twice it had occasion to work and it didn't.

Q. You were there all the time it was operating? A. Yes.

Q. It only worked two occasions then? A. It is used every day.

30 Q. You were not there all the time? A. We made a mark on the crane afterwards so that the man who operates the crane can't go any higher. We gave him an indicator because we couldn't rely on the safety device.

Q. Supposing he should ignore that indicator? A. Then the accident will happen.

Q. He may have ignored the indicator many times you know nothing about, and the safety device may have worked many times you know nothing about? A. That is hardly possible.

Q. It might have? A. It might have.

Adjourned at 6.30 until 8 o'clock.

Upon resuming at 8 o'clock.

40 ERRIS SHEPPARD, Sworn. Examined by MR. MCCARTHY:

Q. You are, or were at the time of the accident—and I think still—the boss rigger for the Toronto Power Company? A. Yes.

Q. How long have you occupied that position? A. About a year and a half or two years.

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No. 6
Evidence
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John
Schwartz,
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amination.
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tion.

—continued

- Q. Before that what positions did you occupy? A. Craneman.
- Q. Where? A. Hydraulic Power plant, and the Toronto Power too
—both.
- Q. How long were you with the Hydraulic Power people? A. Be-
tween two and three years.
- Q. In what capacity? A. Craneman.
- Q. Is that a large plant? A. Yes, sir.
- Q. Is that the one known as Chalcraft's? A. Yes.
- Q. Before you went with them what position had you? A. Rigger.
- Q. Where? A. Aluminum Company; same concern only a different 10
department.
- Q. How long were you rigger with them? A. About a year and a
half.
- Q. You were over two years as craneman? A. Between two and three
years.
- Q. Then you came to the Toronto Power Company and were crane-
man with them for a time? A. Yes.
- Q. How long were you craneman with them? A. I don't just recol-
lect the exact date; somewheres near a year or a year and a half.
- Q. And then you were made boss rigger. You were boss rigger at the 20
time of the accident, and are still? A. Yes.
- Q. Did you ever get your papers as an expert craneman? A. I have
recommends for expert craneman from other power companies.
- Q. You were the man in charge of operations the day Paskwan was
killed? A. Yes, sir.
- Q. Were you in the forebay at the time of the accident? A. Yes, sir.
- Q. We are told—not to go over it too often—that just before the ac-
cident the crane had been utilized in moving some ice racks further down
the building, downstream? A. Yes.
- Q. If that is the case how did you come to where this man Paskwan 30
was working? A. I had a large section of stop logs to pass from the fore-
bay into the generating department and from there out into the yard. The
crane was busy with the ice racks at the time, and I started the men put-
ting a hitch on the logs to turn them up to pass them through.
- Q. What men were working there? A. There was Cattley, myself, a
man named Hughie Kerr, Hagerly—is all I can recall just now.
- Q. Do you remember a man named Dion working there? A. Working
there, but I don't remember him at that particular place.
- Q. Do you remember Cattley being there? A. Yes.
- Q. Cattley tells us he was subsequently discharged, discharged by 40
you—was he one of your gang? A. Yes, sir.
- Q. Was Cattley an expert craneman? A. An expert craneman?
- Q. Yes? A. No, sir.
- Q. Do you remember what he was discharged for? A. Yes, sir.
- Q. What for? A. Not carrying out his instructions.
- MR. PHELAN: That is not material.

MR. McCARTHY: Q. You were telling us you had this gang of men putting the hitch on the stop logs, and the crane was down at the other end moving the ice racks. When did it come up to where the stop logs were?
A. I gave the craneman a signal for the big hook.

Q. How did it get up to where you were from down there? A. When I gave him the signal for the big hook the pulleys was through with the ice racks; he started the big hook coming down and the little hook going up.

Q. Did you give the signal to come down? A. Yes.

Q. You gave him the signal to come down? A. Yes.

10 Q. What hook was he operating with on the ice rack? A. The small hook.

Q. When you gave the signal to come down, what was the position of the hooks? A. The small hook was about five feet above the ice racks.

Q. And the big hook? A. Was up in its usual position three or four feet from the bottom of the large drum.

Q. Did you give the signal by hand or by word of mouth? A. By hand.

Q. To move up? A. To move up and lower his big hook.

Q. To what? A. To lower the large block.

20 Q. When did you give him that signal; where was the crane when you gave the signal to lower the large block? A. Up in front of the ice rack, about thirty-five feet from where I was working.

Q. You gave the signal to what—lower the large block? A. Yes, sir.

Q. And move his crane up at the same time? A. Not at the same time. I was putting the cable on; I wasn't in need of the crane for a few minutes. I was working on the hitch. I gave him to understand what I wanted.

Q. You gave him to understand you wanted the large block? A. Yes, sir.

30 Q. What I want to get at: When did he move up to where you were?
A. He moved up directly after I told him I wanted the crane.

Q. He moved up directly after you told him you wanted the crane? A. Yes.

Q. What was he doing with the blocks? A. When I ordered the crane he started the small hook going up and the crane coming up the forebay.

Q. Had he started the big one coming down? A. In the meantime, coming up the forebay, he started the big hook coming down.

Q. As he came along to you he started the big hook coming down? A. Yes.

40 Q. How long did it take to move his crane thirty-five feet? A. Matter of couple of minutes.

Q. How long did it take the big hook to come down? A. It would take three or four minutes.

Q. The little hook, does it travel as fast as the big hook or faster? A. It travels faster than the large hook.

Q. What signals did you give him in regard to the movement of the blocks? A. I gave one signal for the large hook to come down.

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Q. What is that? A. That is the large block.

Q. How did you give the signal? (Witness illustrates).

Q. Holding your hands like that? A. Yes.

Q. What does that indicate? A. The large hook.

Q. That you want the large hook? A. Yes.

Q. On a signal of that kind what does the eraneman do? A. Start to lower the large one. If the little one is down far enough to interfere with the operations of the large one he will pick it up also; that is up to him.

Q. You simply give him the signal, as you say, with your hands? A. Yes.

Q. Give him no signal by word of mouth? A. No.

Q. Give him the signal you indicate by putting your hands like that (shows) which indicates to him you desire to use the large hook? A. Yes.

Q. You say if the small hook was so low it would interfere with the operation it would be up to him to raise it? A. Yes, sir.

Q. Did you watch him as he came? A. I watched the large block.

Q. How far did the large block get down before the accident happened? A. It would be about five or six feet above the men's heads when the small hook dropped.

Q. Five or six feet above the men's heads when the small hook dropped; you mean the men standing on the cement? A. Standing on the stop log.

Q. The stop log was on top of the cement? A. Yes.

Q. The men on top of the stop log, you say the large block was five or six feet above their heads when the small one came down? A. Yes.

Q. Did you pay any attention to the raising of the small one? A. Not particularly, no, just to notice he started taking up to clear obstruction.

Q. Your attention was fixed on the large block? A. Yes.

Q. How low down had the large one got to come before it would hook on to the hitch? A. Well, at the level of the stop logs before it would be any use to me.

Q. What was the first you knew of the accident? A. I heard the cable snap on the small hook and saw it drop.

Q. That time you say the large block was five or six feet from the top of the men's heads? A. Yes.

Q. When you were crane operator over at the Hydraulic Power Company and other places did you ever use any safety appliances for stopping? A. Yes sir.

Q. Where? A. Hydraulic Power Company.

Q. What safety appliance, automatic safety appliance? A. They have an electrical device.

Q. How was it worked? A. Worked in connection with the wires that control the motor, that controls the hooks, one hook.

Q. One hook or two hook device? A. One hook.

Q. Just explain shortly—we do not want to go into details particularly—how it operates? A. It was fixed to the crane in such a manner when the

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block got within two or three feet of the equalizing sheave it would tighten the running screw up on to a spring and throw out a switch, which would break the circuit.

Q. How long had you been working, operating, with that; was it there all the time you were operating? A. Yes, it was there all the time I was operating.

Q. All the time you were working with the Hydraulic people. Tell us, how did it work? A. It didn't work satisfactorily.

10 Q. Why? A. Well, I was operating the crane one day and it failed to work and I broke a sheave.

Q. How did it get up as high as that? A. It failed to work. The chain which was supposed to tighten up this switch got out of kilter in some way or another.

Q. Speaking generally—I do not want to take one example—taking it over the time you were operating, was it satisfactory or not; take it over the whole period? A. It was not satisfactory.

Q. Why? A. It never seemed to be working proper.

Q. Did it work sometimes? A. Sometimes it worked.

Q. Sometimes it did not? A. Sometimes it didn't.

20 Q. During the time you were with the Toronto Power Company you had no such device? A. No, no such device.

Q. Did you ever have an accident during that time? A. No, sir.

Q. During the time you were with the Hydraulic Company was a signalman ever employed? A. No, sir.

Q. Who gave the signals or the instructions as to what you were to do? A. Foreman rigger or different contractors; foreman of the job we were putting in.

Q. When you went to the Power Company as boss rigger did you ever employ a signalman while you were on the job? A. Yes sir.

30 Q. Did you? A. Yes, sir.

Q. Who did you employ? A. Morrow his name is.

Q. What did you employ him for? A. For the hooks when they were down in the pit.

Q. That is 200 feet down? A. Yes, below the surface of the floor.

Q. Where would you station your signalman? A. Right in front of the crane.

Q. On the same floor the crane was? A. Yes.

Q. Where would you be? A. Down.

Q. 200 feet down? A. Yes.

40 Q. You would give your signals to the signalman on the ground floor and he would transmit them to the man on the crane? A. Yes.

Q. While you were working in the forebay, did you ever employ a signalman there? A. Never employed a signalman while the hooks were working above the ground.

Q. Why not? A. For one reason the castings and machinery they have there is out of the ordinary; they are large ones, and it takes an ex-

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perienced man handling heavy stuff to give signals, takes an experienced rigger for the moving of these castings.

Q. Why is that? A. Got to be moved such a little bit at a time and just a certain way.

Q. You could not very well transmit your ideas to another man and let him carry them out. In the forebay where you were moving the ice racks or moving these stop logs could you there have made any use of a signalman when you were there yourself? A. No, sir.

Q. Why not? A. I always give signals myself when the hitches are on. 10

Q. You are practically the signalman? A. Practically the signalman.

Q. You had given the signals on this occasion? A. On this occasion.

Q. Was your craneman on this occasion a good man, an experienced man? A. Yes, sir.

Q. Had you ever known him to make a similar mistake? A. Not similar, no.

Q. You found him satisfactory during the time——? A. Satisfactory.

CROSS-EXAMINED by MR. PHELAN:

Q. So that your only reason for not employing a signalman above ground was that it requires an experienced man to give the signals? That is the reason you gave Mr. McCarthy; is that the correct one? A. Yes. 20

Q. Is that the only one? A. That is the only one.

Q. I suppose we can assume a signalman would be a man who would be competent to give signals, cannot we? A. In some cases.

Q. In some cases? If you have got a signalman who is not competent to give signals he is not a signalman? A. In a way.

Q. He is not performing his duties? A. Yes, sir.

Q. You say that he can still perform his duties although he does not understand the giving of signals? A. On certain lines.

Q. A proper signalman is one who gives signals and who understands the signals he is giving? A. In some cases. 30

Q. In every case? A. No.

Q. Listen to the question: A proper signalman is a man who gives the signals and understands the signals he is giving? A. In some particular lines of business, yes.

Q. In the work this crane was doing; if you had a proper signalman on the job when you were doing this work, that man would give the signals and he would have to understand the work he was doing—if you had a proper signalman, a competent one—is not that correct? A. No, sir.

Q. It is not correct; a competent signalman would not understand the work he was doing? A. Not in places like that. 40

Q. Why not? A. There is very few places like that where they have machinery and stuff like that to move in that particular line.

Q. If you had a competent signalman he would have to understand his work to be competent, would not he—is not that correct? (Witness pauses).

Q. What is the answer? A. A competent signalman is one who would have to understand his work in order to be competent? What is the answer? A. I said he would have to be to a certain extent.

Q. He would to the fullest extent? A. One signalman can't understand every kind of signals.

Q. You would not want a signalman there at all unless he was competent? A. No.

10 Q. A competent signalman is one who would understand the work and know how to give his signals; is not that correct? A. Yes, sir.

Q. If you had a man of that kind, a competent signalman such as you have described, would this accident have happened? A. It might or might not.

Q. The chances are it would not have happened with such competent signalman; is not that correct? (Pause.)

Q. Let me put it this way: If you had a competent signalman, and that competent signalman had done his duty, would the accident have happened? A. It might or might not.

20 Q. Listen to the question? A. I listened to it.

Q. If you had a competent signalman, and the signalman had done his duty on this occasion, would the accident have happened? A. I don't know.

Q. Can you say it would have happened? A. I can't.

Q. The chances are—assuming, as I say, he had done his duty—the chances are it would not have happened, are not they? A. There is a doubt.

Q. What is the doubt? A. He might not have been watching the hooks.

Q. Then he would not be doing his duty if he was not watching them; if he was not watching them he would not be doing his duty? A. No.

30 Q. Understand the question. If you had a competent signalman, and that man was doing his duty, would the accident have happened? A. I couldn't say.

Q. Can you say it would have happened? A. No, I wouldn't say either.

Q. You did not have any such person, did you? A. No.

Q. You had a lot of work to do besides give signals? (Pause.)

Q. Do you mind answering my question? A. Yes, sir; I had other work.

Q. Considerable other work? A. I had considerable.

Q. How many men did you have under you on this day? A. I don't recall the exact number.

40 Q. Six or seven? A. Yes.

Q. And the craneman? A. And the craneman.

Q. And in addition to that you were superintending the raising of the gratings? A. Yes, sir.

Q. And the removal of the stop logs? A. Yes, sir.

Q. And anything else? A. Not that I recall.

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Q. Were you assisting the men in knocking the ice off the gratings?

A. No, sir.

Q. Were you assisting them in knocking ice off the stop logs. A. Yes.

Q. So that you had a number of duties to perform on this occasion, had not you? A. Yes.

Q. You were unable to give your whole attention or anything like your whole attention, to your duties as signalmen? A. Yes, I was.

Q. You were able to do that? A. Yes.

Q. And still look after all your other work as well? A. Yes, sir.

Q. Well, we will accept your answer on that. You told us you started moving the crane back to where the stop logs were? A. Yes, sir. 10

Q. Was it after you did that you commenced to knock the ice off the stop logs? A. Yes.

Q. As soon as you gave the craneman his instructions to move back to the place where the accident happened you started this other kind of work, knocking the ice off the stop logs? A. Not directly.

Q. How soon after? A. When I saw the crane half way from the distance it was I started up to where I was working.

Q. You started to use an axe or hammer—what was it, an axe? A. A hammer. 20

Q. Did you continue to use the hammer until the accident happened? A. No.

Q. When did you stop? A. It would be—well, you might say I turned my head just as the hook fell.

Q. You had worked until the accident happened, and turned your head just as the hook fell; it was the breaking cable that first attracted your attention? A. Yes.

Q. From the time the crane was half way back to its position until you heard the cable break you were engaged at some other occupation? A. Yes. 30

Q. You were paying no attention at all to the movement of the pulleys or the operation--? A. Yes.

Q. Listen, please, until I finish the question. During the interval you were knocking the ice off the stop logs, were you paying any attention to the operation of the crane or pulleys? A. Yes.

Q. How were you doing it? A. Watching the hook I ordered to come down.

Q. And knocking the ice off with the hammer? A. Yes.

Q. Do you ask the jury to believe you were doing both at the same time? A. I wasn't watching the way you put it. 40

Q. What were you doing? A. I was standing on the edge and hammering, and I could see it at the same time.

Q. Let us understand. You were standing alongside the stop logs with the axe in your two hands—is that correct? A. Hammer.

Q. Back towards the crane? A. No.

- Q. Which side towards the crane? A. Sideways.
- Q. About the same position you occupy with respect to that wall (indicates) now? A. Yes, looking up and over.
- Q. You were knocking the ice off the stop logs? A. Yes.
- Q. Every time you hit the stop log you glanced over your shoulder?
A. Yes.
- Q. That is what you want the jury to believe? No, I don't want them to believe that; I couldn't be looking over my shoulder standing sideways—I glanced out.
- 10 Q. All I want to get is your evidence? A. I got you exactly.
- Q. Each time you hit the ice you glanced out at the crane? A. Not each time; no.
- Q. How often, between every third or fourth blow? A. Along there.
- Q. Every tenth blow? A. No, not every tenth.
- Q. How often did you glance at the crane? A. Every few seconds.
- Q. You could not hit more than one blow every few seconds; it would take more than a few seconds to make four blows. How often did you glance at the crane? A. I don't just recall.
- 20 Q. Will you swear you glanced at it twice? A. Yes.
- Q. More than that? A. More than that.
- Q. How often will you swear you glanced at it? A. Three times.
- Q. From the time the crane stopped travelling until the accident happened, will you swear you glanced at the blocks three times? A. What do you mean by blocks?
- Q. The pulleys? A. At the one I ordered; yes.
- Q. Between the time the crane stopped, remember, and the time the accident happened you glanced at the big pulley three times? A. Yes.
- Q. And then just a momentary glance sideways between the time you struck the stop log with the axe? A. Yes.
- 30 Q. So that you were giving about 7-10ths of your time to knocking off the ice and about 3-10ths to the crane? A. Yes.
- Q. That is the way you were discharging your duty as signalman and watching the block? A. Not a signalman.
- Q. You do not consider yourself a signalman? A. Yes, sir, I do to-day.
- Q. Let me ask this question: Is what you have just described the way you were discharging your duty as signalman? A. What did you say again?
- Q. Is what you have just described the way you were discharging your duty as a signalman? A. Yes.
- 40 Q. Do you think that is a competent and proper way to discharge those duties? A. Yes, sir.
- Q. If you had to do it over again apparently you would do it just the same way? A. I do it right along.
- Q. You think that way of doing it is safer than the method I suggest, of having a signalman there? A. Yes, sir.

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Q. What was the last signal you gave the craneman? A. Lower the large block.

Q. And the crane at that time was how far from the place it stopped? A. About thirty-five feet.

Q. Did you say anything about raising the small block? A. No, sir.

Q. Supposing you wanted the large block lowered and the small one raised at the same time, how would you give that signal to the craneman? Just illustrate it to the jury. A. State that again.

Q. Assuming you wanted the large block lowered and the small one raised at the same time, how would you give that signal to the craneman? A. If I wanted the big one down I would go like that (shows signal). 10

Q. Supposing you wanted both done together, just show the jury how you would make your signal. A. Both at the same time?

Q. Yes, both at the same time? A. What do you say; the large one down—

Q. The large one down and the small one up? (Witness illustrates signal.)

Q. Just give us that again? (Illustration repeated.)

Q. That is only part of the signal; give me the whole of it? A. What do you mean? 20

Q. Large one down and the small one up? (Witness again illustrates.)

Q. That would indicate you wanted the two blocks worked simultaneously? A. Yes.

Q. That is what you did on this occasion, was not it? A. Yes.

Q. You wanted the small one up and the big one down? A. Yes.

Q. Was it necessary for the craneman to watch that big pulley as it came down? A. Not particularly; no, until it got such a distance it would be around the men.

Q. He must have been watching it or he would have seen the position of danger in which the small hook got, would not he? A. Yes. 30

Q. If you had been controlling the large pulley and looking after it, it would not have been necessary for the craneman to watch it at all? A. Why so?

Q. I just ask you that. I mean it in the form of a question? A. It wouldn't be necessary to watch it at all.

Q. No? A. Yes.

Q. Why would he watch you for the signal for the big pulley? A. Watch me?

Q. It would not be necessary for him to watch the big pulley? A. No.

Q. In that way he would be able to give his whole attention to the small pulley? A. Yes. 40

Q. Apparently he was watching the big pulley and not the small one, and allowed the small one to get into a position of danger?

MR. MCCARTHY: Nothing of the kind.

MR. PHELAN: Q. Is that how it appeared to you? A. Yes, sir.

Q. That is how it appeared to you? A. Yes.

- Q. He was not relying on you very much to look after the big pulley?
 A. When the pulley got down to the position I wanted I would have stopped him.
- Q. He apparently was not relying on you to look after the big pulley until it got in that position? A. I could not say.
- Q. Was not that your duty, to have looked after the big pulley all the way down until you gave the stop signal? A. No, sir.
- Q. I thought you told me a few minutes ago it was? A. It was up to him until it got to a certain distance, not to watch it all the time.
- 10 Q. All you had to do was to watch the pulley when it got to the right place? A. Yes.
- Q. It was up to the craneman to watch it until it got into that location? A. Yes.
- Q. You were the signalman there? A. Yes.
- Q. You say it was no part of your duty as signalman to watch that big pulley coming down until it got to the position you wanted it stopped? A. Not the exact position.
- Q. Within a foot or two of it? A. Yes.
- 20 Q. When you glanced over your shoulder at the big pulley you were not looking to see how fast it was coming, or how slow it was coming; your only object was to see if it had reached the point where you wanted it stopped? Yes, sir.
- Q. According to your idea, your duty as signalman simply consisted in stopping the big pulley when it got down to where you wanted it stopped?
 MR. MCCARTHY: That is not it.
- MR. PHELAN: Q. Is it your idea your duty as signalman was in stopping the big pulley when it got down to where you wanted it stopped? A. Yes.
- 30 Q. That was the extent of your obligation or duty as signalman?
 A. Yes.
- Q. An ordinary signalman, a signalman with nothing else to do, would have watched both blocks—the one that came down and the one that went up—would not he? It would be his duty to watch them all the time, both blocks? A. That is when there is no load on.
- Q. I am speaking of a signalman who is not a rigger or foreman rigger? A. I understand.
- Q. Would not it be the duty of a signalman to watch both blocks all the time, up and down? A. No.
- 40 Q. Why? A. Not when the load was unhooked on the floor; he would assume responsibility when the load was on.
- Q. Do you say the whole responsibility is on the craneman—? A. —When there is nothing on the hooks.
- Q. The signalman remains idle? A. No.
- Q. You do not agree with the other witnesses in that respect?
 MR. MCCARTHY: Yes.
 MR. PHELAN: Not the plaintiff's witnesses.

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MR. MCCARTHY: Yes.

WITNESS: That is his responsibility.

MR. PHELAN: Q. Not his responsibility, his duty. Supposing he sees that the pulley is running into danger, can he stop it any time, with no load on, or give the signal to the craneman? A. If he sees it.

Q. It is one of his duties to watch out for accidents, and if he sees danger to give a signal to stop; that would be one of the duties of a signalman—is that correct? A. Say that again.

Q. It would be one of the duties of a signalman to watch those pulleys to see that they did not get into any danger, even if they were running light? A. Yes. 10

Q. And that is one of the reasons he is put there, as an additional protection to the men? Is that correct? A. Yes.

Q. You had some experience with safety devices at the Hydraulic? A. Yes.

Q. Do I understand that is the only place you had any experience with them? A. Yes.

Q. What type of safety was that? A. I don't know, there was no type on it.

Q. Was it the worm and gear or cut-out type, make and break? A. 20
Worm and cut-out, both.

Q. On two different machines? A. What do you mean?

Q. Both types? A. One operated on the big hook in one department, and operated on both hooks in another department.

Q. Two different cranes? A. Yes.

Q. Why was it they failed to work on the occasion you referred to? Which one was it failed to work? A. The large one.

Q. Was that the worm and gear? A. Yes.

Q. What was the reason it failed to work? A. The worm and gear 30
you refer to had a chain to—

Q. And the chain operating the mechanism was out of order? A. It was alright in the morning when the crane started out; it was out of order at the time this happened.

Q. It was not any fault of the appliance itself that caused its failure to work, but the fault was in this chain, which was part of the appliance? A. Yes, part of the appliance.

Q. You would not condemn the appliance itself because part of it got out of order, would you? A. It failed to work.

Q. I grant you that. Do you condemn a whole machine or a whole piece of machinery simply because one part of it gets out of order. A. Yes. 40

Q. You condemn the whole? A. Yes.

Q. If one small part of this travelling crane you were using got out of order you would throw the whole crane out of your factory? A. No.

Q. That is what you are doing here? A. No, I am throwing that device out.

Q. Simply because one part of it, through somebody's oversight, failed to work?

MR. McCARTHY: Do not say that.

MR. PHELAN: Q. What was the cause of the chain not working right, somebody's oversight? A. I could not say to that.

Q. Would there be any other reason you would suggest? A. Might be oversight, might be defective part in it.

Q. Or defective part. That is the chain itself was defective? A. Yes.

Q. That is no criticism of the safety device as a device, is it? (Pause.)

10 Q. It was one particular part of the device which got out of order, and it was not made right, or some person neglected to keep it in proper condition, and that is what caused the accident? A. Yes.

RE-EXAMINED by MR. McCARTHY:

Q. My learned friend asked you whether a competent signalman would understand the work. Does the signalman you speak of when you are working in the pit, who stands on the ground floor, does he understand the work you are doing down below, or simply transmits signals? A. Just transmits signals.

20 Q. Has a competent signalman to understand the work at all, or understand the signals? A. On the main floor he has to understand the work.

Q. He would have to understand the work? A. Yes.

Q. A signalman used as a signalman would simply transmit signals from you in the pit? A. In the pit.

Q. You said you generally have a competent signalman in the forebay on the main floor—who was the signalman? A. I was.

Q. Do you consider yourself a competent signalman? A. Yes.

Q. You were the signalman on that occasion? A. Yes, sir.

Q. As signalman were you paying any attention whatever to the small block? A. No; I left that entirely to the craneman.

30 Q. Had the large block dropped sufficiently to take up any particular attention? A. No.

Q. It was still five feet above the men's heads? A. Yes.

Q. And dropping at the rate you told us? A. Slowly.

Q. About thirty-five feet in four minutes? A. Something like that.

Q. My learned friend asked you if you had considerable other work to do. I suppose the crane, as a matter of fact, is operating all the time? A. Yes.

Q. At the particular time of this accident had you anything else to do except attend to this particular work? A. To the moving of the stop logs.

40 Q. You say you were the signalman who was in charge? A. Yes.

Q. Then my learned friend speaks about you having glanced at the pulley three times. That was prior to the accident, and after the crane came to a stop? A. Yes.

Q. How long between the time the crane came to a stop and the ac-

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cident happened? A. You mean the place the accident happened.

Q. Yes? A. I could not exactly say; it wasn't very long.

Q. It was not very long? A. No.

Q. Of course the big hook you were watching, as you say, was still five feet above the men's heads? A. Yes.

Q. Before it received your particular attention. Then you would not have to give signals until it got near to the hitch on the stop logs? A. Yes.

Q. So that you were doing something else in the meanwhile while that hook was coming down? A. Yes.

Q. That large hook did not get into trouble? A. No. 10

Q. Did not injure anyone? A. No.

Q. Has it ever injured anyone while you have been there as signalman? A. No. The hook travels very slowly.

Q. My learned friend spoke to you about a signalman being used when the pulleys are running light; that is, when the pulleys are being operated by the crane operator. While the pulleys are being operated, running light, who would have the best opportunity of seeing the pulleys, the craneman in his cage or the signalman on the ground? A. The craneman in his cage. The machines are about 15 feet to 20 feet high, and the craneman is commencing to pull the hooks up and has got a clear vision. He is on the same 20 level as the machine, and he has to pass the hooks over.

Q. The craneman would be up where the ventilator is and the man who would be watching the blocks would be down on the ground? A. Yes.

Q. You say that the man sitting up there would get a line on the pulleys? A. On the clearance.

Q. Between the frame work? A. Above the machines and the hooks.

Q. And he would know the proper time to stop? A. Yes.

Q. I can understand that. You can speak both as craneman and signalman, having occupied both positions? (No answer.)

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Examina-
tion.

ALLAN H. FAGAN. Sworn. Examined by MR. MCCARTHY: 30

Q. What is your position? A. Foreman for the Canada Foundry Com-
pany.

Q. What particular branch of the work do you do? A. All steel con-
struction work.

Q. Were you the man who put up the crane at the Electrical Develop-
ment Company's plant? A. No, sir.

MR. PHELAN: If my learned friend is going to tender this man as an expert, I submit he is exceeding the number of experts whom he may call. He has already had three.

HIS LORDSHIP: Who do you claim are the experts? 40

MR. MCCARTHY: That is what I am wondering.

MR. PHELAN: McCarthy.

MR. MCCARTHY: I did not ask him any opinion evidence. You did; I did not.

MR. PHELAN: He was the defendants' own expert on this particular subject.

MR. MCCARTHY: No, I only asked him on facts; you asked him on opinion. Expert evidence is opinion evidence. Just because you call an expert does not mean he gives expert evidence.

MR. PHELAN: McCarthy was the first one, and Mr. Schwartz was the second one.

MR. MCCARTHY: He is the only one I called.

MR. PHELAN: All men who are familiar with cranes; expert evidence.

10 HIS LORDSHIP: You can hardly draw the line.

MR. PHELAN: All gave evidence as to the operation of cranes, evidence as to construction, use and advantage of safety appliances and everything else.

HIS LORDSHIP: It is worked in considerably.

MR. PHELAN: They were examined by my learned friend as experts.

MR. MCCARTHY: As to facts. I asked no opinion evidence at all. My learned friend surely must confuse the term. A man may be an expert, but if he is only asked as to facts he is not an expert witness.

MR. PHELAN: An expert is certainly not confined to opinion evidence.

20 MR. MCCARTHY: Must be.

HIS LORDSHIP: Calling a person really experienced on matters of every day occurrence, that would not make him an expert in the sense Mr. McCarthy means. Of course, if he gives expert testimony—

MR. PHELAN: Expert testimony is not limited to opinion testimony.

MR. MCCARTHY: Must be limited; that is the meaning of the rule. You can call as many as you like; meaning of the statute is opinion evidence; you can only ask three experts as to opinion.

MR. PHELAN: The statute does not say that; it is limited to three expert witnesses.

30 MR. MCCARTHY: The statute has been construed to mean that.

MR. PHELAN: Where?

MR. MCCARTHY: In the Supreme Court.

MR. PHELAN: I would like to see the case.

MR. MCCARTHY: I will show it to you.

HIS LORDSHIP: (After perusing notes)—The witness McCarthy in one sense did give answers—

MR. MCCARTHY: In cross-examination.

HIS LORDSHIP: When he goes into the question of the impracticability of safety devices; that is in a sense expert testimony.

40 MR. MCCARTHY: Cannot be.

HIS LORDSHIP: Just in that sense.

MR. MCCARTHY: Your Lordship must realize, and I know your Lordship appreciates the point of my defence, I have got to ask that for the simple reason the point of the defence from the company's standpoint, that the man exercised judgment. Therefore I had to ask him: Did you, in

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keeping it out or putting it in, exercise your judgment. I have got to. That is the only way I can put in a defence in a case of this kind.

HIS LORDSHIP: Did not you go further than that? Just look at your examination of McCarthy.

MR. MCCARTHY: Grant I did; does your Lordship call Sheppard, a crane expert, an expert?

HIS LORDSHIP: I am only dealing with the one.

MR. MCCARTHY: Sheppard only gives me two.

MR. PHELAN: Sheppard is in the same class.

MR. MCCARTHY: I have not asked this man any expert evidence yet. 10

MR. PHELAN: I am only objecting in case you tender it.

MR. MCCARTHY: I can tender any kind of evidence I like. Whether I make him an expert is another matter.

HIS LORDSHIP: I do not see in my notes of Sheppard's testimony any expert evidence gotten out of the witness by Mr. McCarthy in his examination-in-chief.

MR. PHELAN: Just a moment, My Lord.

HIS LORDSHIP: He has dealt very largely with facts.

MR. PHELAN: He starts out by asking what his experience is in the operation of cranes. 20

MR. MCCARTHY: That does not make him an expert.

MR. PHELAN: What experience and knowledge he has of safety appliances.

MR. MCCARTHY: That is a fact; that does not make him an expert.

HIS LORDSHIP: That is describing who he is; that did not draw from him any expert testimony.

MR. PHELAN: He qualifies as an expert by saying: "I am a man of experience and knowledge in the operation of cranes."

HIS LORDSHIP: I would not like to shut him out for that reason. I think he is in a different position from the first man, McCarthy. McCarthy 30 gave expert testimony in the examination-in-chief.

MR. PHELAN: He is the expert of the company.

MR. MCCARTHY: No.

MR. PHELAN: Mr. McCarthy put this man up as an expert witness before the jury, qualified to pass judgment upon the advantage or disadvantage of using the safety appliances.

MR. MCCARTHY: I never asked him a single, solitary question as to the advantage or disadvantage of them, but as to the actual facts that happened in his experience. That is not expert evidence.

MR. PHELAN: I submit it is expert evidence. 40

MR. MCCARTHY: It is for his Lordship to rule.

HIS LORDSHIP: All that is asked: Where was he employed and in what capacity. I do not think that infringes the rule.

MR. PHELAN: As to his experience with these safety devices.

HIS LORDSHIP: He said he had seen them work in other places.

MR. MCCARTHY: Telling facts.

HIS LORDSHIP: I have not any note I can see hurriedly in his evidence.

MR. PHELAN: He was asked how the safety appliances worked at the Hydraulic; he said they did not work satisfactorily—broke a sheave.

MR. MCCARTHY: That is a fact, not opinion.

MR. PHELAN: Expert evidence.

RULING:

HIS LORDSHIP: I will accept this witness as the third expert.

MR. PHELAN: Subject to my objection.

Examination of witness resumed.

10 MR. MCCARTHY: Q. You were in the construction department at the Canada Foundry? A. Yes.

Q. Were you present when the cranes were constructed? A. I was present at the time they were erected.

Q. These cranes were erected under whose direction and specifications? A. Well, the erector was a man by the name of Captain Medford, of Toronto.

Q. I said under whose direction and specifications? A. Under his direction they were erected, and I suppose under Dr. Pearson's specifications.

20 Q. Was Dr. Pearson there?

HIS LORDSHIP: Do you know? Do not suppose.

WITNESS: The superintendent was Dr. F. S. Pearson's brother, Walter Pearson; he was there at the time superintending the plant.

MR. MCCARTHY: Q. You were there representing the Canada Foundry? A. No, I was there working for the Toronto Power Company, Electrical Power Company.

30 Q. Since that time have you had a good deal of experience in the installation of cranes and other machinery throughout the country? A. I have put up electric cranes from Sault Ste. Marie down to Sydney, Nova Scotia.

Q. Covering what time is your experience? A. Well, for the past 11 years I have been in steel construction.

Q. How many plants in this country have you seen in that time; have you gone through? A. I have gone through the steel plant in the Soo.

Q. Roughly speaking, how many have you gone through—I do not want them individually? A. Several of them.

Q. Have you been through the large plants in this country? A. I have been through the largest in this country.

40 Q. Have you seen cranes similar to the one at the Toronto Power Company's plant; have you seen cranes similar to that operating? A. Yes, sir.

Q. Is that of standard construction? A. Standard construction in this country; manufactured in this country.

Q. I mean you are familiar with the cranes there? A. Yes.

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Q. What do you say as to their being efficient and up-to-date? A. They are up-to-date as far as I can see; a good, standard crane.

Q. Are they making the same class of crane to-day? A. They are.

Q. Have you in the course of your visits to these different works in your experience ever seen any safety devices applied to cranes? A. Yes.

Q. Where? A. At the Canadian Niagara Power Company.

Q. What did you see there? A. I seen two safety devices.

Q. Where was that? A. Maybe in 1905-1906.

Q. Did you watch them to see how they worked? A. I watched them; yes. 10

Q. What was the result? A. Worked satisfactory at times, and other times didn't work.

Q. Are they still there? A. No, they are not there.

Q. What happened? A. They have been done away with, or taken out.

Q. What sort of cranes do they use there? A. William Sellers' crane.

Q. Is that similar to the crane they used at the Toronto Power Company? A. No; they are more complicated than the Canada Foundry crane.

Q. You say they had safety devices in there, but they were subsequently taken out? A. Yes.

Q. Do you know of any other plant in this country where they use 20 safety devices in cranes? Not to my knowledge.

Q. In the ones you visited? A. Not to my knowledge.

Q. Do you know of any safety devices—in your particular business are you on the lookout for these particular things? A. Not exactly.

Q. I mean in the foundry? A. They don't come under me.

Q. Have you yourself operated cranes? A. I have operated cranes; yes.

Q. In the installation of machinery and one thing and another? A. At times when they would have no craneman; at times in a pinch.

Q. You had to go in and operate? A. Yes. 30

Q. In what capacity acting? A. In the capacity as foreman.

Q. In the installation of heavy machinery? A. Yes.

Q. While you were operating as foreman did you employ a signalman? A. Never did.

Q. You never did? A. Never did.

Q. How many plants have you put up? A. Well, I have put up quite a few. You wouldn't want me to go over them?

Q. Just give me some idea of the number? A. The largest plant I put up was at Sydney, Nova Scotia. I was there two years—cost \$1,250,000, the contract was—employed 135 men. 40

Q. How many plants have you put up altogether? A. Perhaps a dozen.

Q. That would cover about how many years? A. Some of them small and some large.

Q. Spread over how many years? A. Spread over eleven years.

Q. In that time you frequently had to act as foreman yourself in the in-

stallation of heavy machinery? A. Have been foreman all that time, with the exception of six months I may have been idle.

Q. Were you installing this machinery with cranes? A. Yes. I was twenty-one months in the Canadian Niagara Power Company installing machinery.

Q. You installed it in the Canadian Niagara? A. Also fifteen to eighteen months in the Toronto Development installing machinery, in the time of Mr. Pearson.

Q. During that time you were acting as foreman? A. Yes.

10 Q. Were you using a crane to instal the machinery? A. Always.

Q. Electric crane? A. Always.

Q. During that time you did not employ a signalman? A. Never had one.

Q. Who was the signalman? A. I was myself when I was on the top of the floor; with the exception when I was underneath the floor, then I would have to have one.

CROSS-EXAMINED by MR. PHELAN:

Q. There are places where a signalman is regularly employed? A. There may be.

20 Q. Do you know that there are? A. No.

Q. There may be? A. Yes.

Q. If a signalman is employed, that would be an additional factor of safety, would not it? A. Well, I wouldn't say—not on electric cranes—No.

Q. Would you say it would not be? A. No, I wouldn't say it would not be.

Q. If it would not be, why do you say it would not be an additional factor of safety? A. Because I could rely more on the operator than I could on the signalman.

30 Q. If you had two of them there they would both have to make a mistake at the same time for an accident to happen? A. What I generally find out, the crane operator gets careless and won't take signals.

Q. We are assuming the crane operator will do what he is told, and the signalman will do what he should do. Under those circumstances is not a signalman an additional factor of safety? A. Yes.

Q. It would be the duty of the signalman, particularly where two pulleys are operating at the same time, to watch them and see that neither one got into a position of danger? A. I can't agree with you there.

Q. You say not? A. No.

40 Q. Would he have no duty when the two are being operated together? A. If there was a load, if it was attached to a load.

Q. If there was no load? A. If there was no load it is on the operator I would rely.

Q. I did not ask that. If you have a signalman there, is not it the duty of the signalman to watch the pulleys, even if there is no load? A. No.

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Q. I am not speaking of a foreman acting as signalman, but I am speaking of a signalman who fulfils that duty and nothing else. Would not it be that man's duty to watch the pulleys even if there was no load? A. If you employ a signalman, it is not the custom—

Q. I did not ask that. If you employ a signalman, would not it be his duty to watch the pulleys, even if there was no load on? A. If you make it his duty.

Q. If you employed a signalman you would make that his duty, would not you? A. Yes.

Q. By the way, do you still manufacture these cranes? A. Yes, sir. 10

Q. The same kind of crane as in the defendants' premises? A. Manufactured two not less than a week ago.

Q. The Canadian Niagara Company discontinued the cranes upon which the safety devices were? A. They discontinued the safety device.

Q. I thought you told Mr. McCarthy they put in another kind of crane, the Sellers crane? A. I didn't.

Q. What did you say about that? A. I said the Canadian Niagara had Sellers cranes.

Q. With safety devices on? A. Yes.

Q. What kind were they? A. They are what is called the cut-out 20 switch.

Q. Do you know why they were discontinued? A. Because they were not satisfactory.

Q. Do you know why? A. No.

Q. They may not have been discontinued for that reason at all? A. Yes; they were discontinued for the reason they could not be relied on. At times they would work, and at times they wouldn't work.

Q. You are unable to give the reasons why they would not work? A. No; I am not an electrical man, and therefore I could not.

Q. Over in the American plants is it not the fact that these safety de- 30 vices are in common use? A. According to the evidence, as far as I know.

Q. Your work was installing cranes, was it? A. Yes, sir.

Q. You do not make the safety appliances, do you? A. No.

Q. The safety appliances would be put on after the installation, so that it would be nothing unusual for you to travel from the Soo to Sydney, Nova Scotia, and back and back again and not see the safety devices? A. It might be.

Q. The chances are the safety devices, if used at all, would be put on after you had installed the crane, and after you had left the place? A. No. Might happen as an accident. I generally always stay there and test the 40 crane out and see if it is working.

Q. The safety devices are put on after the crane is installed? A. I suppose so, but I don't know.

Q. So that in every case you put up a crane the safety devices may have been installed after you left there? A. Later on.

Q. As to that, of course, you are not in a position to say? A. No, sir.

Q. I understand you to say that not being an electrical man you are not in a position to give any explanation of why they failed to work sometimes, or not able to express any criticism or approval or disapproval of the safety devices—is that correct? A. No.

MR. MCCARTHY: That is the defence, my Lord.

HIS LORDSHIP: Any reply?

MR. PHELAN: Yes, my Lord.

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REPLY.

EARL CATTLEY, Recalled. Examined by MR. PHELAN:

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10

Q. You have been sworn? A. Yes.

Q. You have already told us, by occupation you are an electrician? A.

Yes.

Q. Did you hear Mr. Schwartz give his evidence? A. Yes.

Q. Did you hear the explanation which he gave for the failure of the safety devices to work at the Hydraulic? A. Not at the Hydraulic.

Q. Where? A. Niagara Falls branch of the Niagara Falls Power house.

20

Q. Did you hear his explanation that the devices failed to work owing to the momentum of the motor and the drum after the cut-out had operated? A. Yes, sir.

Q. You heard that explanation? A. Yes.

Q. Would that apply to the crane which the defendants had in operation in their premises? A. I don't just understand the question.

Q. His explanation was the safety devices failed to work because of the momentum which the motor and the drum gained——?

MR. MCCARTHY: Not the drum.

MR. PHELAN: Q. The momentum the motor gained, which continued after the cut-out operated—that is his explanation? A. After——

30

Q. Just a moment: You remember that is his explanation? A. Yes, sir.

Q. Could that explanation apply to the crane operated by the defendants? A. No, I don't think it could.

Q. Why not? A. The inference I drew from Mr. Schwartz' explanation, them motors drifted so far, they either had no brakes on or they were——

Q. Drifted—do you mean momentum? A. Yes.

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Q. What have they on the motors of the defendant company? A. They have a magnet friction brake.

Q. How does that operate? A. When you start the hoist running the current going through the magnet, the armature of the magnet, draws it up and releases the break, frees the brake from the fly wheel and allows the motor to operate. When the current is cut off the armature drops back down and locks the brake on the fly wheel.

Q. Is that the friction band, that brake? A. Yes.

Q. Just as soon as your power is cut off the friction band comes into play and operates as a brake on the fly wheel? A. Yes, sir. 10

Q. What is the effect or result of that? A. The motor stops in a second or two.

Q. How far will the pulley have travelled before the motor stops with that appliance? A. When they shut off up there?

Q. Where do you mean by "up there"? A. At the Toronto Power House.

Q. Where the accident happened? A. When they shut off the hook up there I never noticed it drift over three or four inches.

Q. That is the pulley block? A. The hook.

Q. The defendants' motor was equipped with this braking appliance, 20 the motor where this accident happened? A. They all have brakes on.

Q. You say just as soon as the power is shut off this brake operates on the fly wheel to stop the momentum of the motor? A. If the brake is in perfect working order.

Q. Does it make any difference to the operation of that brake whether it is shut off by the controller or by the cut-out device? A. No; the cut-out device cuts out the source of feed for the motor—whether it cuts out in the power-house or on the line, no matter where it cuts out, breaks the circuit of the motor—your motor is bound to stop.

Q. Just answer the question: Does it make any difference to the oper- 30 ation of the brake how the power is cut off, whether it is cut off at the controller or with the cut-out device? A. No, it doesn't make any difference.

Q. So that if they had a cut-out device on the particular motor where the accident happened, would there be any momentum such as Mr. Schwartz has reference to in the motor after the power was cut off? A. There wouldn't be any drift to that if the brakes were working right.

CROSS-EXAMINED. By MR. MCCARTHY:

Q. Do you know the kind of motor and crane and brakes they have at the Power Company? A. Only from a general observance.

Q. Ever been up in their place? A. Yes, I have. 40

Q. When? A. Where?

Q. Niagara Falls Power Company? A. Not the Niagara Falls.

Q. You know nothing whatever about the appliances? A. No.

Q. You do not know whether they are similar to the Toronto Power Company? A. No.

Q. You have no idea? A. Only from what I gathered from what Mr. Schwartz said.

Q. You did not know what kind they had at that time? A. Where?

Q. Toronto Power Company? A. No.

Q. You only know from him what kind they had in the Toronto Power Company? A. Only from what he said.

10 Q. He did not know, and how could you get an impression from him?
MR. PHELAN: He says he gets the impression from what he said.

MR. MCCARTHY: I see.

MR. PHELAN: That is the Reply, My Lord.

Counsel and His Lordship agreed to finish the case to-night.

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MR. MCCARTHY: Will your Lordship submit questions?

HIS LORDSHIP: I have not prepared them yet; I intend to submit them. Counsel may think there is something that should be put in. I have the draft here. I will ask the jury, subject to what counsel may suggest: Was the occurrence caused by negligence or was it a pure accident? If it was caused by negligence, was it negligence on the part of defendants which
20 caused it? If so, state fully and clearly what was the act or acts, omission or omissions on their part which constituted the negligence, giving some explanation. And the usual question about contributory negligence.

MR. MCCARTHY: Will your Lordship ask whose negligence it was?

HIS LORDSHIP: Yes, and some explanation of whose negligence. I am just giving the bald question, followed by the usual question: If there was any negligence on the part of deceased which was in any way contributory to it, state fully what that negligence was. Is there anything else?

MR. PHELAN: Contributory negligence is not suggested in any way.

HIS LORDSHIP: Not at all.

30 MR. MCCARTHY: I thought that would perhaps only prolong the agony.

HIS LORDSHIP: There is no evidence directed to it.

MR. MCCARTHY: I cannot suggest there was contributory negligence. There has not been a word about it.

HIS LORDSHIP: Leave that out and that will narrow it down. If there is anything special counsel agree upon I will submit it.

MR. MCCARTHY: Your Lordship is asking what the negligence was?

HIS LORDSHIP: And whose it was, and what it consisted of.

MR. MCCARTHY: I think that is really the whole thing, my Lord.

40 MR. PHELAN: And assess the damages.

MR. MCCARTHY: Both at common law and under the Workmen's Act.

HIS LORDSHIP: I will explain to them what the two mean and get their answers on both.

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MR. McCARTHY: Perhaps my learned friend and I can agree on that. It seems to me about \$2,500 under the Workmen's Act.

MR. PHELAN: \$3,000.

HIS LORDSHIP: That is a matter for them.

MR. PHELAN: Ask them to assess the damages under both branches.

HIS LORDSHIP: If you think in view of the lateness of the hour and the nature of the evidence you can get better results from a clear-headed jury in the morning I will adjourn.

MR. McCARTHY: It is for your Lordship to say.

HIS LORDSHIP: I am not a bit particular. (To the jury) — Is it too much of a strain on you, gentlemen, to hear the addresses of counsel and my address and finish the case to-night. 10

MR. McCARTHY: What do you say, gentlemen?

JURYMEN: Go ahead.

Counsel addressed the jury.

No. 7
Charge to
Jury.

CHARGE TO THE JURY.

HIS LORDSHIP: At the outset, gentlemen of the jury, it may be advisable to remind you of the form and nature of your oath; that is, that you are to come to your conclusion and give your verdict according to the evidence, which means the evidence you have heard while in the jury box, and not any evidence or any information you may have obtained elsewhere. If any of you have any preconceived ideas about the case you must disabuse your minds of them, because your oath is that you will render your verdict according to the evidence, and that alone. 20

The evidence is no doubt fresh in your minds. Your duty, of course, is to deal with the facts, mine to deal with the law, and after the exhaustive review of these facts by counsel in their addresses I do not propose to review the evidence to any extent, but rather direct my remarks to the law as it applies to these facts. The claim of the plaintiff is made in two ways—under the common law and under the Workmen's Compensation for Injuries Act. There is the distinction that has been mentioned to you by counsel as to what constitutes a claim under the common law and under the Workmen's Compensation Act, and the difference as to the amount of damages which under one or other of these cases you are entitled to allow. 30

The defendants are a corporate body, and naturally operate through representatives. Those composing the corporation, shareholders and directors, were not present at the time of these happenings, but the operations of the company were carried on by recognized representatives, the mechanical superintendent and the foreman of a certain department, and these are the men who had principally to do with the carrying on of the part of the operations of the company which are in question here. If there is liability 40

on the part of the defendants in this action it must therefore be either by reason of what these representatives did or neglected to do, or because of some neglect of the defendant company in not entrusting its operations to competent persons, or in not providing fit and proper places for the workmen to work, or a fit and proper system under and with which to work. Under the common law certain obligations rest upon employers to act in a certain way towards those whom they employ, and over and over again the duties of employers in that respect have been dealt with by text writers, and the courts in the interpretation of the law as applied to the employer in his

10 relationship to the employee. The master, under the common law, is bound to take all reasonable precautions to secure the safety of his workmen. Even though an employer is not generally liable for the result of accidents which happen to employees from dangers essentially inherent in the work they are carrying on, he nevertheless becomes liable when reasonable precautions have not been taken by him to reduce the danger to the lowest point or remove it altogether. That is an obligation which rests on him for the protection of his employee. Again, a person who uses dangerous articles in an industry or manufactory must take all possible care to prevent accidents by adopting all reasonable means whereby these accidents may be

20 prevented. It has been argued by the plaintiff, as one of the grounds on which it is claimed that the defendants are liable, that the employers in this case did not use reasonable means to care for the safety of their employees, inasmuch as they did not provide safety appliances on this machine, which was in operation at the time the man Paskwan met his death.

The various witnesses have described the operation of the machine and what actually caused the falling of the hook which killed Paskwan. The small hook had gone up, and the plaintiff says care was not taken and means were not adopted to prevent it running against the intercepting block near the drum, and therefore the cable snapped and the little hook fell and

30 struck the man on the head, and he died soon after as the result. A great deal of evidence, too, has been offered as to whether or not what was in use was the best appliance possible—the means they adopted were the best possible in all reasonableness to prevent accidents, and it will be for you to judge on that evidence whether or not there was something more the defendants could have done, and should have done, in the way of applying proper and efficient safety devices to prevent what actually did happen. The evidence of certain witnesses is that certain devices had been used in other places and were not satisfactory. And evidence was submitted tend-

40 ing to show that these devices were satisfactory. Explanations were given of why the devices which were stated not to have been satisfactory were not so, ending with the evidence of Cattley, called in reply, that the devices referred to could have been made satisfactory if there had been a brake or something of that nature used. And there is also the evidence as to the momentum of the motor and how far that affected the stopping quickly, or otherwise, of the operation of the cable and the lifting of the hook after the power was shut off. When you have dealt with the common law aspect of

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the case; that is, whether or not the defendants did their duty in providing fit and proper appliances, and fit and proper means of operating the machine, there is to be considered the question of the liability that falls upon an employer by reason of the operation of what is known as the Workmen's Compensation Act. As explained by counsel, that Act gave the employee rights against the employer in certain cases where previous to the passing of the Act no liability existed, but in these instances limited the amount which the injured person or the representative of the injured person are entitled to receive. The limit of the damages allowable under this Act is \$1,500, or three years' wages of a man in similar employment in this Province for three years preceding the accident—that is, a man of the same grade of employment—whichever of these two sums is the greater. You will have to consider whether there was negligence on the part of McCarthy, or on the part of Sheppard, who was the foreman, in not watching the operations of the hook so that he would be able to see that it did not strike the point where it did strike, and so break the cable; had he seen it, the contention being he would have, or should have, signalled the craneman to stop the running of the machinery. Or was there negligence on the part of the craneman, the man who sat up in the cage and operated the crane and the parts of machinery which move backward and forward, including these two hooks. You will understand, of course, that there is no allegation whatever that any injury arose from the larger hook. A great deal has been said to you about the operations of this larger hook, but that was said by way of explanation of the operation of the two together, the larger one coming down on the signal of the foreman (who said he was the signalman), and the attention of those who were operating the machinery being directed towards it, and perhaps directed away from the smaller one. 10 20

I should have said before passing on from this branch of the case, there was a question as to whether the employers were under an obligation to provide a signalman, a man who would give signals and do nothing else—an experienced, competent signalman. You heard the evidence of the various parties as to what would have been the consequences had such a man been employed; that is, a man who was not a signalman in the sense Sheppard said he was—because Sheppard admits he had other duties to perform, and did perform other duties—but a signalman whose sole duty it would have been to watch the crane and hooks and give signals to the man who was operating in the cage. 30

Were the defendants doing their full duty in providing safety for their employees under the circumstances you find here in not providing a signalman, even though you should conclude that they were not expected to provide the mechanical devices that were spoken of. 40

On your conclusions as to the facts it will rest with me to say whether there is liability one way or another, and if you find there was negligence on the part of any person I may have to decide whether such negligence entitles the plaintiff to damages at common law or under the Workmen's Compensation Act. By way of explanation of that Act, you understand

from what has been stated to you that there were certain cases before the Act came into force where, although the employer was liable for injury done by the servant or employee to an outsider, there was no liability where that injury was done to a fellow-employee. To meet such cases the Workmen's Compensation Act was passed. The Act declares that where personal injury is caused to a workman—and that would include a case like this, where death has resulted—“By reason of any defect in the condition or arrangement of the ways, works, machinery, plant, buildings or premises connected with, intended for or used in the business of the employer, or (2)

- 10 By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him whilst in the exercise of such superintendence, or (3) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed, or (4) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or by-laws of the employer, or in obedience to particular instructions given by the employer or by any person delegated with the authority of the employer in that behalf, or (5) By reason of the
- 20 negligence of any person in the service of the employer who has the charge or control of any points, signal, locomotive, engine, machine or train upon a railway, tramway or street railway.

That explains why, in these questions I am submitting to you, I ask you to state particularly—if you find negligence on the part of any person—whose negligence it was, what were the acts or omissions which constituted the negligence, and did the negligence cause the accident which resulted in this man's death.

The first question you are asked is:

- 30 (1.) Was the death of deceased, John Paskwan, caused by negligence, or was it a mere accident?

You will understand that not every happening of this kind involves liability on the part of some person. There is a distinction between an occurrence that is a pure accident, where no person is to blame, and the other class of cases, where there is negligence on the part of some person, and where that negligence causes the injury to another person. That is the first matter you will have to decide upon. Having come to a decision on this, if you find there was no negligence, and that it was a mere accident that ends it. If, however, you find there was negligence the second question is:

- 40 (2.) Was the casualty (or accident) caused by the negligence of the defendants, or of any person or persons in the employ of the defendants?

If in answering this question you find there was negligence on the part of the defendants I would ask you to add to your answer by naming the person or persons whose negligence it was.

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(3.) If so, state fully and clearly whose negligence it was, and what were the act or acts, or omission or omissions, which brought about the accident?

If there was negligence of some person that negligence would either be in the act or acts of some person or persons, or by the omission or omissions of some person or persons to do something they were bound to do.

In cases of this kind there frequently arises the question of contributory negligence. Although the defendants here have set up in their pleadings contributory negligence on the part of Paskwan they have not pressed it. Contributory negligence means such negligence on the part of the injured person as brings about or helps to bring about the accident or occurrence. But, as I have said, it is admitted here there was no contributory negligence on the part of the man who was killed, so that I submit no question to you about it. 10

The last question is as to the damages. I ask you to assess the damages in any event, no matter what your answers may be to the other questions.

(4.) At what amount do you assess the damages? (a.) Under the Workmen's Compensation Act. (b.) At common law.

You will assess the damages in two ways, first, under the Workmen's Compensation Act. That, as I have told you, is the case where the damages 20 are limited to either \$1,500 or to three years' wages, whichever is the greater. I mean three years' wages of a person in the same grade of employment in this Province for the three years preceding the accident. On the evidence you will perhaps find the amount comes to more than \$1,500, because, as I recall it, the lowest figure at which this man's earnings was placed was something over \$800 a year. You are entitled to consider the evidence given as to the earnings of people in the same grade of employment. Two or three witnesses working as riggers have said that they got \$3.00 a day. There was something said about some one having got \$3.50 a day. It is fair to consider idle time, and on the other hand, overtime time 30 for which workmen are paid. There was evidence given from the defendants' own books, in one case at least, where the time of the workman's work had run very much more than the usual number of hours per day, showing there must have been overtime for which the man was paid. So that it will be either \$1,500 or three years' wages, whichever is the greater. Use your best judgment on the evidence you have heard. In finding the damages at common law you are not restricted in the same way. If I should find on your answers that there is common law liability, then I want to know what you consider are the damages at common law. You are not limited in the amount. You are entitled to take into consideration the circumstances 40 of this plaintiff, a woman of 48 years of age—I think she said. Her deceased husband was 28 years of age, and a robust, strong man. You would have to consider what would be the possibility of life of a man of his age and condition of health, and what is the damage to her, a woman of her age. You will treat her loss or damage simply as a matter of dollars and cents; sentiment does not enter into your calculation. You cannot pay for the in-

jury to feelings and for the worry and all such that survivors of deceased people suffer. You are not to measure the damage in that way, but the actual loss in dollars and cents to her. You will have to use your best judgment, and under all the circumstances give what is fair and reasonable compensation, having regard to the evidence you have heard and the ages of the parties and their condition of health, and so on.

I do not know there is any more I should say to you. You understand that in these civil actions ten or more of you agreeing can bring in a verdict. It is not as if this were a criminal case, where all twelve have to agree; ten, eleven or twelve of you agreeing upon the same conclusion can bring in a verdict.

I am sorry you are kept so late, but perhaps all concerned will be better pleased to have this case disposed of to-night. I shall wait here while you deliberate. You will take these questions with you and write in your answers below the questions. If you have not space enough on the sheet on which are the questions take another sheet and number your answers to correspond with the questions.

The jury retired at 11.10.

MR. McCARTHY: I want to take objection to your Lordship's charge to the jury in reference to the duty of the defendants as to appliances. I submit your Lordship only stated half the law to them in regard to what their duty was. I think it has been laid down time and time again a company is not bound to put on every imaginable safety device or safety suggestion that comes into the market. We all know that in modern days there are a hundred different appliances which are suggested by agents, by people who are booming patent appliances, and it would be an imposition upon any company if they were obliged to instal every fool device that came into the market.

HIS LORDSHIP: You think my statement is not sufficient?

MR. McCARTHY: I think they should be given thoroughly to understand that just because a device comes into the market which a neighbor happens to put on his machine, whether it is successful or not successful, there is no obligation on the part of any other company to put it on unless the evidence satisfies them beyond all doubt it is an absolute safety appliance, which I submit here the evidence cannot.

HIS LORDSHIP: Do you think there is any danger of the jury misconceiving what I said? I quite agree that every fool device which comes into the market need not be adopted by a company.

MR. McCARTHY: One knows by practical experience to-day a great many of these devices do come upon the market. We know how that applies particularly to mechanical devices. We know how the man will come along and say: "Let me put this in for trial. If it works you can buy it; if it doesn't work I will take it out, and it will not cost you anything." If every owner of machinery was put in that position it would be a great hardship upon them. Your Lordship should not only instruct the jury as to that, but you should tell them that after all the jury are not the judges of

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what machinery a man shall put in and shall not put in; they have got to be guided entirely by the evidence they have heard. Because they think it is a good device it is not for them to say it should be adopted. In other words, juries cannot regulate the manufacturing conditions of this country. They have got to be guided by the evidence they have heard, and that evidence has got to satisfy them there has been absolute neglect on the part of the company in failing to instal some particular machinery as a safety device. In the absence of any statutory regulation, in the absence of any statutory inspection—which, of course, there is here—there has been no recom- 10
 mendation as far as one knows compelling us to put on a device of that kind. In the absence of that can a jury say: “Some people think it is a good thing, and we are going to make them put it on.” If juries are to be the judges of what a manufacturer shall put in his plant, or what he shall not put in his plant your Lordship will see what difficulties it would involve and how carefully a jury should be instructed in a case of that kind.

HIS LORDSHIP: Is not that rather a matter of the evidence? If the evidence—especially if it be that of experienced persons—goes to show that a device is really a good device should not they be entitled to say whether in the particular instance the proprietor was negligent or otherwise in not adopting it? 20

MR. McCARTHY: I do not think so. There are a thousand things you have got to take into consideration.

HIS LORDSHIP: Some of the evidence has been directed to that, and I told them they were entitled to consider that evidence. I do not think there was any doubt in their minds as to my statement about adopting devices. I think it is quite clear the jury should know, and they do know, and I am quite willing to see that they do know it cannot be taken to mean that a manufacturer is bound to use every device that comes along because it is offered. If you think my statement to them was not clear enough or strong enough, I am satisfied they should be made to understand it. 30

MR. McCARTHY: It occurred to me your Lordship did not explain that to them as fully as they might have it, so that they might have a proper understanding of what their duties were in deciding whether an employer shall or shall not instal some piece of machinery. I can quite understand where there has been neglect of a statutory obligation or neglect of an inspector's recommendation that would be a clear case. Where there is a difference of opinion between advisers of the company—or not any difference of opinion, as far as they are concerned—or if they are unanimous such a device is of no value, or possibly a source of danger, how can twelve men who are inexperienced come forward and say, “We are going to compel you to 40
 put this and that on?”

HIS LORDSHIP: They are entitled to judge on the evidence whether or not the device is a good one, especially if persons of experience speak of it.

MR. McCARTHY: That is the first.

HIS LORDSHIP: Also whether they consider some device was necessary,

and whether defendants had notice that sort of occurrence had happened before.

MR. McCARTHY: This thing had happened, and they made enquiries, and they found two devices on the market, and they made up their minds those devices were not absolutely satisfactory, inasmuch as they were inefficient. I think your Lordship should instruct the jury they acted properly in what they were doing.

HIS LORDSHIP: That they were not proper devices to be installed?

MR. McCARTHY: That the company acted properly in considering the
10 matter when the first accident happened, and came to the conclusion that the devices as they then existed were not in such a state of efficiency as would justify them putting them on. Your Lordship's instructions to the jury were, if in the opinion of the jury they were not satisfactory—that is, that they had not reached that state of efficiency which would justify—

HIS LORDSHIP: Coupled with the reasons the witnesses gave why they did not put them on. They did not put on the devices or use a signalman.

MR. McCARTHY: I am coming to the signalman.

HIS LORDSHIP: Was it a question of expense?

MR. McCARTHY: Never.

20 HIS LORDSHIP: They said it would mean another man.

MR. McCARTHY: I think your Lordship is absolutely wrong. Mr. Phelan put it to each man, Did the company consider the expense of another man, and they said No.

HIS LORDSHIP: It was so stated to the jury.

MR. McCARTHY: I did not hear it suggested.

HIS LORDSHIP: It was stated in one place. The witness may not have meant it.

MR. McCARTHY: We are getting entirely off my objection. My objection is that your Lordship should instruct the jury that the company is not
30 bound to instal a device unless they are satisfied that device is an efficient device and is capable of doing the work which it is intended to do. And when if it is shown, as it is here undoubtedly, that that device is subject to failure—no one witness has said it is absolutely efficient, no one witness has come forward and said it was absolutely efficient—then I submit—

HIS LORDSHIP: Is not that part of it for the jury?

MR. McCARTHY: Quite true. Your Lordship is anticipating me again.

HIS LORDSHIP: Dealing with this particular thing—

MR. McCARTHY: If your Lordship will pardon me? You rather interrupted my train of thought; I want to get out my objection properly. If
40 the jury are of opinion it was not an efficient device, then your Lordship should instruct them if they are of the opinion it was not brought to that state of efficiency which would justify them in installing it, there was no obligation on the company to do so.

HIS LORDSHIP: That is putting it in another way.

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MR. McCARTHY: That is what I was coming to if your Lordship had not anticipated me.

HIS LORDSHIP: I beg your pardon. If the evidence convinces them it was not a safe device they were not bound to adopt it. Is that the way you put it?

MR. McCARTHY: A reasonably efficient device for the purpose for which it was intended—they were not bound to adopt it. I think your Lordship should instruct the jury that way.

HIS LORDSHIP: I do not think there is any objection to that?

MR. PHELAN: None at all.

HIS LORDSHIP: I will recall the jury. Is this the effect of what you say: If on the evidence the jury think the safety device proposed was not a reasonably efficient one they were not bound to adopt it.

MR. McCARTHY: There was no obligation on the defendants to adopt it. And that it would not be negligence on their part not to adopt it.

HIS LORDSHIP: I do not think there is any objection to that, Mr. Phelan?

MR. PHELAN: As a proposition of law I think it is reasonably sound.

HIS LORDSHIP: What else, Mr. McCarthy?

MR. McCARTHY: This is more on non-direction. Whether your Lord- 20
ship has properly directed the jury as to the liability of a company at common law. As I understand it the obligation of a company at common law as laid down in the leading cases—if a company such as this, which is managed by a Board of Directors, employ competent men to carry on the undertaking and furnish them with all the necessary material and resources to enable them to do so they have fulfilled their whole duty to their employees.

HIS LORDSHIP: From what source are you laying down that proposition in that form?

MR. McCARTHY: You will find that laid down in *Cribb vs. Carnock*, 30
in 1907, 2 K.B. I also cite the case of *Young vs. Hoffman*, which lays down a similar rule. The origin of that suggestion comes in a very much older case, *Wilson vs. Merry*, which your Lordship will find reported in *Law Reports*, 1 Scotch Appeals, 326. That decision was confirmed in the case of *Cribb vs. Carnock* and *Young vs. Hoffman*, in which all the law is reviewed. *Young vs. Hoffman* is in the same volume as *Cribb vs. Carnock*, 2 K.B., 1907, at page 646, two pages further on.

HIS LORDSHIP: What is the short statement of the case as put there?

MR. McCARTHY: Just the way I put it. They put it in this way: “It is manifest it would be folly on the part of directors of a company to at- 40
tempt to interfere with the management. . . .”—which must appeal to your Lordship would be reasonable here, it would be folly on the part of the directors of this company to lay down which would be the proper practice. And that, your Lordship will appreciate, is the reason of the introduction of these clauses in the Workmen’s Compensation Act, which you just read. It would be absolute folly on the part of the directors of the company—

that is stated here to be the law—to interfere with the installation of complicated machinery. Therefore what the law does require, the common law requires that they shall appoint competent men to see that that machinery is properly installed and properly managed, and that proper employees are engaged to manage it. That was the common law at the time the Workmen's Compensation Act was passed, and is still the common law. Then the Workmen's Act comes in, and it says in the paragraphs which your Lordship read, where personal injury is caused to a workman by reason of any defects in the condition of the ways, works, machinery or plant, buildings
 10 or premises connected with or used in the business of the employer, he shall be compensated. That in a sense does away with the effect of the old common law I pointed out to your Lordship, and makes us liable where in the opinion of the jury there is any defect in the plant or ways, machinery, and so on. So that if the jury are of opinion in this case there is a defect in the machinery by reason of failure to instal this appliance it would not be a common law defect, but it would be a defect for which the people in charge would be responsible, the foreman or others, and would make us liable not at common law, but under the Workmen's Compensation Act. That would be the full extent of our liability in a case of this kind.

20 HIS LORDSHIP: Do you agree with that, Mr. Phelan?

MR. PHELAN: I do not agree with Mr. McCarthy's proposition, My Lord.

MR. MCCARTHY: I do not know whether they have the English Reports in the library here. If they have, I would like to show Your Lordship the case of Cribb vs. Carnock. It is 1907 2 K.B. It is very clearly set out there. I tried to get it in the library just now.

HIS LORDSHIP: Have you a citation in the volume from which you were just reading before you picked up that book?

30 MR. MCCARTHY: No, my Lord, I just had Halsbury; just refers to the principle. If I can get that case which puts it so very clearly I will show it to your Lordship. I had the point up last week in a somewhat similar situation, in connection with an electrical plant down in Smith's Falls.

HIS LORDSHIP: Does not Halsbury state anything at all on the point?

MR. MCCARTHY: No, my Lord.

HIS LORDSHIP: Does not the text make some definite statement?

MR. PHELAN: States the duty of the employer at common law, which extends to the installation of a proper system to control the work.

MR. MCCARTHY: That is the duty; I am getting down to the question of law.

40 MR. PHELAN: The law must be founded on the duty.

MR. MCCARTHY: The law must be founded on the duty. It is a question of whether they have performed their full duty when they obtained competent men and placed them there. I had the very same question up this week before the Appellate Division.

MR. PHELAN: If your Lordship follows Mr. McCarthy's conclusion a

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limited company can be liable at common law only under one condition, and that is where it fails to appoint competent servants.

MR. MCCARTHY: No.

MR. PHELAN: That must be the result.

MR. MCCARTHY: No, my learned friend does not understand the proposition or he would not say that.

MR. PHELAN: You say your duty is discharged when you employ competent servants.

MR. MCCARTHY: If the men themselves delegate the duty to others then they must see that those men are competent, and when they see the others are competent they have discharged their duty. These men themselves as directors to undertake, as they did in the case of Ainslie & McDougall (in the Supreme Court), to look to the premises themselves and make a personal inspection of them before they began opening the coal mine, once they interfered or undertook to interfere, then the law said: "You having undertaken the duty yourselves, it was your duty to do it properly, and the jury having found you did not do it properly then you are liable at common law." The whole thing was threshed out in the Jones case against C.P.R. Your Lordship will see in the report of the Privy Council decisions this year reference to the Wilson vs. Merry and Barton and Coal cases, laying down that principle, distinguishing the Jones case, where there is the statutory duty. Carrying it to a logical conclusion, if the directors of a company or a company would not be absolved from liability if they fail, no matter what the opinion of their experts might be, if they failed to comply with a statutory regulation of any kind, that at once makes them liable at common law.

MR. PHELAN: Of course, the Jones case, as Mr. McCarthy says, goes back to the law of Wilson and Merry. That case lays down that a company having supplied a proper system and adequate resources—

MR. MCCARTHY: Nothing about system in Wilson and Merry. 30

MR. PHELAN: Having supplied that their duty ceases, unless they knew or ought to have known the system or resources were not being used.

MR. MCCARTHY: Wilson and Merry never laid down any such proposition.

MR. PHELAN: I think so.

MR. MCCARTHY: I had the privilege of reading it this week, and it lays down no such proposition. If my learned friend shows me that I will take back everything I said.

MR. PHELAN: That is the distinction Wilson and Merry lays down, and that is the law. 40

MR. MCCARTHY: Wilson and Merry never mentioned anything about system.

MR. PHELAN: The duty is incumbent upon the corporation to supply a proper system and resources.

MR. MCCARTHY: Nothing to do with system. How can they supply system?

MR. PHELAN: Halsbury says the duty to superintend and properly control the master's work includes among other things a proper system.

MR. MCCARTHY: Undoubtedly if there is a master.

HIS LORDSHIP: Mr. McCarthy distinguishes between a master who is not a company and the case of a company.

MR. PHELAN: Take the Fralick case, which went to the Privy Council. That is a case where the company was held liable.

MR. MCCARTHY: My learned friend is absolutely mis-stating the Fralick case, because I was in it from start to finish.

10 MR. PHELAN: You probably did not get the right perspective.

MR. MCCARTHY: I have got the proper facts, which you have not got, I am sorry to say. The Court of Appeal agreed with Chief Justice Meredith, who tried the case. And the Fralick case was as near this case as you could ever get a case to be, for this reason: It was a question there whether the company, having selected a certain method of protection, were right or wrong in doing so. The jury held they were wrong; the jury preferred another method of construction. Chief Justice Meredith held at the end of the trial that notwithstanding what the jury had found the company were absolved at common law because they had selected a proper man
20 to instal a system of protection; he having submitted that to the company, the company had done their full duty. That was upheld in the Court of Appeal. When it got to the Supreme Court they raised a new point. They raised the point: Are not your rules of statutory effect? Does not your rule say that all trains must be controlled by a dispatcher? The rule was turned up, and the rule was found to have the effect of a statute. Therefore there was no departing from that, and therefore the Supreme Court held—"You have violated the terms of a statute, therefore having violated the terms of a statute you are responsible for the full amount of the damage, under section 480 of the Railway Act." Up to the question as far as
30 involved in this case the Fralick case is all in favor of my contention, if your Lordship will look at it. The Supreme Court raised that point. Mr. Justice Anglin took that point off his own bat, and the point was never raised up to that time by any one. The rule was produced, and it was held to be of statutory effect, because the rule was passed by the Board of Railway Commissioners.

MR. PHELAN: I think your Lordship will find the distinction exists between supplying these things in the first instance and the conduct of them after they have been supplied. That is the whole distinction. There is one very recent case of Plocks vs. Canadian Coal Company, 3 Ontario Weekly
40 Notes, 380, a case of Mr. Justice Britton's, I happened to notice recently. Defendants were running coal trucks on a travelling crane, and they had not their coal yard sufficiently lighted so that the motorman could see that he was dropping the bucket down vertically to be loaded, and as a result the workman in endeavoring to do his duty was injured. Mr. Justice Britton says there the defendants were negligent in adopting a system without proper protection. As far as reasonably possible it was their duty to conduct

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the work in as safe a way as it could be done without danger to the men below. I think we can assume in the case of a defendant such as the Canadian Northern Coal Company—at any rate there was no evidence in the report of failure on the part of the defendants to supply competent employees and competent superintendents. There, as your Lordship sees, the defendants were negligent in conducting a system without proper protection, a very similar case to this. I think possibly if a proper system is supplied and competent men placed in charge, and then the men do not use the system furnished and the company do not know about it, they would not be liable. I think that is the furthest the law goes in favor of Mr. McCarthy's contention. 10

HIS LORDSHIP: Is there any other objection? I want to get the jury back before they get too far.

MR. MCCARTHY: That is my contention on non-direction. I don't know whether that involves the necessity of asking the jury a further question as to whether the company did employ competent men?

MR. PHELAN: That cannot be done now.

MR. MCCARTHY: I do not know it cannot, if it is necessary. If your Lordship thinks under my submission as to the law it is necessary that that question should be asked it can be done at any time, even after the jury has brought in a verdict. 20

Perhaps on the question of damages your Lordship should have told the jury in assessing common law damages, while the man's average yearly earnings were \$800 or \$900, in arriving at the amount of damages they have got to deduct what it would cost a man to live and other incidental expenses, a man of his age, with his expectancy of life.

HIS LORDSHIP: I think the jury knows where money goes. I may be mistaken as to that.

MR. MCCARTHY: As long as they do not think employees are entitled to the full amount of their earnings without any deduction. 30

HIS LORDSHIP: I should assume they would reasonably work that out for themselves. If the man lives his wife gets under ordinary circumstances so much. The jury understand that. You never find the jury give the full amount. If a man had an expectancy, say of ten years, and was earning \$700 a year you never find them giving \$7,000; they arrive at some lower amount.

MR. MCCARTHY: One so often meets with that kind of thing; it arises in nearly all these cases. You have the general expectancy given of the joint lives, and you get the man's earnings. Then the jury are justified in saying on those facts, he might live or he might not live; he may be ill; he may not be able to continue those earnings. 40

The jury were recalled at 11.40 p.m.

HIS LORDSHIP: Gentlemen of the Jury: My attention has been drawn by counsel to something to which they think I should have drawn your attention. The first point is one both counsel agree may be mentioned to you.

And that is in dealing with the obligation of the company, if any, to instal one or both of the devices that were suggested. I am asked to say to you that if on the evidence you have heard you think the safety devices which were proposed were not reasonably efficient devices then there was no obligation on the defendants to adopt them. That you will bear in mind in your deliberations. Another question is raised: In fixing the amount of damages you will find under the common law. In considering the amount of the yearly earnings of the deceased you are entitled to consider how much of that would be the wife's; how much of those earnings she personally would get the benefit of, and how much she loses in dollars and cents by his death. It may well be that all he earned would not go directly to her. You can estimate what would be her benefit out of it.

The jury retired at 11.45 p.m.

The jury returned at 12.06 a.m., and handed their answers to his Lordship.

HIS LORDSHIP: I will read the questions and answers, and you will be good enough to see if I am correct.

(1.) Was the death of deceased, John Paskwan, caused by negligence, or was it a mere accident?

20 Answer. Negligence.

(2.) Was the casualty (or accident) caused by the negligence of defendants or of any person or persons in the employ of the defendants?

Answer. Yes.

(3.) If so, state fully and clearly whose negligence it was, and what were the act or acts, or omission or omissions, which caused or brought about the accident?

30 Answer. The defendant company were negligent through their authorized employees, namely: Through their master mechanic for failing to instal proper safety appliances and to employ a competent signalman. Through their foreman rigger for failing to give proper attention to the descent of the large hook, and so leave the craneman free to watch the small block. Through the craneman for neglecting to stop the small hook in its proper place.

(4.) At what amount do you assess the damages?

Answer. (a.) Under the Workmen's Compensation Act, \$3,000.

(b.) At common law, \$6,000.

HIS LORDSHIP: Is that your verdict, gentlemen?

JURORS: Yes.

40 MR. PHELAN: I move for the entry of judgment for the common law amount of these findings.

HIS LORDSHIP: Have you anything to say?

MR. PHELAN: Just this, my Lord: Referring to our earlier discussion, I submit that it is the duty of the company in the first instance to supply proper and sufficient appliances and resources and a proper and sufficient system. The jury have found they failed in both respects. That is a duty

RECORD.

—
In the
Supreme
Court of
Ontario.

—
No. 7
Jury's
Answers.

No. 7
Argument.

RECORD.

—
*In the
 Supreme
 Court of
 Ontario.*

—
 No. 7
 Argument.
 —continued

on the company they cannot delegate to superintendents in such a way as to relieve themselves of the responsibility. The jury's finding of negligence in that respect is sufficient to entitle the plaintiff to the benefit of the common law verdict.

HIS LORDSHIP: Mr. McCarthy?

MR. MCCARTHY: The intention of the jury is clearly that the mechanical superintendent is guilty of negligence in failing to instal proper safety appliances, and also for the failure of the same man to employ a competent signalman. Under the common law those are defects of a fellow-employee, and there therefore cannot be a common law liability on these findings. 10

HIS LORDSHIP: It is worded rather peculiarly, but it is there, and I will consider it.

MR. MCCARTHY: (Quoting)—“Through their foreman rigger for failing to give proper attention to the descent of the large hook.”

HIS LORDSHIP: That would be on the other branch of it.

MR. MCCARTHY: I do not know whether it brings it under the other branch.

MR. PHELAN: Perhaps it would be desirable to have the jury retire and say whether on the evidence it was the duty of the defendant company's mechanic to employ a competent signalman or the duty of the defendants. 20

MR. MCCARTHY: I do not think they can say that.

MR. PHELAN: In order to remove any doubt about it they should be asked to do it.

MR. MCCARTHY: That is a legal proposition.

MR. PHELAN: No; a question of deduction from the evidence. No allegation on our part the employment of the signalman was the duty of the mechanical superintendent. We say that was the defendants' duty.

MR. MCCARTHY: That the defendants did not delegate duty in that sense? 30

MR. PHELAN: As a matter of fact we say it was the defendants' duty.

MR. MCCARTHY: Purely a matter of law, it was the defendants' duty under the circumstances.

MR. PHELAN: The best way under the circumstances is to ask the jury to retire.

MR. MCCARTHY: I object to that. If my learned friend had any objections they should have been urged before.

HIS LORDSHIP: It should not be discussed in the presence of the jury. I will take it as it is and deal with it.

MR. MCCARTHY: I will give your Lordship a reference to these cases. 40 I will give the reference to the Fralick case, and I will give your Lordship the exact place where the discussion took place in the Cribb case.

MR. PHELAN: Perhaps your Lordship will allow me to put in something in reply to that? I will submit it to Mr. McCarthy.

HIS LORDSHIP: Yes, I would be glad if you would do that, and submit it to Mr. McCarthy.

Court adjourned at 12.20 a.m.

Certified correct,

A. F. LOWRY,

Official Reporter in
Supreme Court of Ontario.

RECORD.

*In the
Supreme
Court of
Ontario.*

No. 7
Argument.
—continued

RECORD.

IN THE SUPREME COURT OF ONTARIO.

*In the
Supreme
Court of
Ontario.*

THE HONOURABLE MR. JUSTICE KELLY.

Monday, the 27th day of
October, 1913.

No. 8
Formal
Judgment.

BETWEEN :

KATE PASKWAN

PLAINTIFF,

AND

THE TORONTO POWER COMPANY LIMITED,

DEFENDANTS.

This action having come on for trial before this Court, with a jury, at 10
the sittings holden at St. Catharines for the trial of actions, on Tuesday, the
14th day of October, 1913, in the presence of counsel for the plaintiff and the
defendants, and the jury having answered certain questions submitted to
them by the Court, and assessed the damages of the plaintiff under the
Workmen's Compensation Act, at the sum of \$3,000, and at common law at
the sum of \$6,000, this Court was pleased to direct this action to stand over
for judgment, and the same having come on this day for judgment;

1. THIS COURT DOTH ORDER AND ADJUDGE that the plain-
tiff do recover against the defendant the sum of \$6,000, and her costs to be
taxed.

GEO. S. HOLMSTED,
Registrar.

20

IN THE SUPREME COURT OF ONTARIO.

RECORD.

BETWEEN :

KATE PASKWAN,

PLAINTIFF,

AND

THE TORONTO POWER COMPANY, LIMITED,

DEFENDANTS.

*In the
Supreme
Court of
Ontario.*No. 9
Notice of
motion by
way of
Appeal to
Appellate
Division.

10 TAKE NOTICE that a motion will be made on behalf of the above named defendants to the Appellate Division of the Supreme Court of Ontario, at the sittings of the said Court at Osgoode Hall, in the City of Toronto, commencing on Monday, the 1st day of December, at the hour of 11 o'clock in the forenoon, or so soon thereafter as the application can be heard, by way of appeal, from the judgment directed to be entered by the Honourable Mr. Justice Kelly on the findings of the jury for the sum of \$6,000 and costs, and for an order directing that the action as against the defendants be dismissed, on the following grounds:

1. The defendants are lessees of the property of the Electrical Development Company, and as such are operating the said plant.
- 20 in turn have appointed efficient and capable superintendents to regulate and superintend the work of the said plant.
3. The defendant company do not, and have not attempted to control the plant themselves, but have placed in charge of the same a mechanical superintendent, an electrical superintendent and a general superintendent, the said directors having no knowledge of the mechanical or electrical contrivances, and being themselves incompetent to perform said duties.
4. There was no undertaking on the part of the said company with the deceased John Paskwan that the directors would personally superintend the work of the said plant, but he accepted the employment under the aforesaid conditions.
- 30 5. The jury have not found that the persons in charge of the said plant were incompetent, nor have they found that the company did not give the persons in charge full authority and discretion in the use of whatever appliances they saw fit in the workings of the said plant.
6. The doctrine of common employment is applicable to this case, and there can be no liability at common law.
7. For other reasons sufficient in law to support this appeal.

40 AND TAKE NOTICE that upon and in support of this application will be read the pleadings and proceedings in the action, the questions submitted to the jury and their answers thereto, the judgment of the learned Trial Judge, and such further and other material as counsel may advise.

Dated at Toronto, this 24th day of November, 1913.

McCARTHY, OSLER, HOSKIN & HARCOURT,

To Samuel King, Esq.,
Solicitor for the Plaintiff.

Solicitors for the Defendants,

RECORD.

—
*In the
 Supreme
 Court of
 Ontario.*
 —

No. 10
 Formal
 Judgment
 of Appellate
 Division.

IN THE SUPREME COURT OF ONTARIO.

THE HONOURABLE THE CHANCELLOR.
 THE HONOURABLE MR. JUSTICE RIDDELL.
 THE HONOURABLE MR. JUSTICE MIDDLETON.
 THE HONOURABLE MR. JUSTICE LETCH.

Thursday, the
 5th day of
 February,
 1914.

BETWEEN:

KATE PASKWAN,

PLAINTIFF,

AND

THE TORONTO POWER COMPANY, LIMITED,

10

DEFENDANTS.

UPON motion made unto this Court on the 21st day of January, 1914, by counsel on behalf of the above named defendants in presence of counsel for the plaintiff, by way of appeal from and to set aside the judgment herein pronounced by the Honourable Mr. Justice Kelly on the 27th day of October, 1913, upon hearing read the pleadings, the evidence adduced at the trial, and the judgment aforesaid, and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that the matter of the said appeal should stand over for judgment, and the same having come on this day for judgment:

20

1. THIS COURT DOTH ORDER that the said appeal be and the same hereby is dismissed:

2. AND THIS COURT DOTH FURTHER ORDER that the costs of the said appeal be paid by the defendants to the plaintiff forthwith after taxation thereof.

Issued 25th February, 1914.

(SEAL)

N. F. PATERSON,
 Registrar.

APP DIV.

PASKWAN

v.

TORONTO POWER CO.,
LIMITED

Argued 21st January, 1914.

Copy of Judgments of APPEL-
LATE DIVISION, deliver-
ed 5th February, 1914.McCARTHY, K.C., for defend-
ants, appellants.PHELAN AND KING, for plaintiff,
respondent.

RECORD.

*In the
Supreme
Court of
Ontario.*No. 11.
Reasons for
Judgment
of Appellate
Division.

MIDDLETON, J.:—Appeal from judgment of Kelly, J., dated October
10 27th, 1913.

The action was brought by the widow of the late John Paskwan, who was killed at the power-house of the defendant company on the 8th February, 1913, to recover damages at common law, and, in the alternative, under the Workmen's Compensation Act, for his death.

Although the appeal as launched covers wider ground, upon the argument it was confined to the discussion of the question whether liability at common law had been shown.

Paskwan was employed as a rigger in the house over the forebay of the Power Company's works at Niagara Falls. A travelling crane is there
20 erected. This crane travels from end to end of the house. The hoisting apparatus travels across the house at right angles. From the crane are suspended two hooks, the larger of which is capable of lifting fifty tons, and moves comparatively slowly; the smaller is capable of raising ten tons, and moves with greater rapidity. These hooks are hoisted by steel cables wound upon drums.

On the day of the accident in question Paskwan was working at some stop logs placed at the entrance to the penstocks in the forebay. He and other men had placed cables around these stop logs, when the crane was signalled, and came from the other end of the premises for the purpose of
30 hoisting them. The foreman signalled his desire to use the larger hook. This was accordingly lowered, and the smaller hook was hoisted so as to get it out of the way. The crane was operated by a man in a cage suspended below it, where he would have a clear and untrammelled view, not only of the crane itself, but of the operations being carried on. The hoisting apparatus was some thirty-five feet from the floor of the building.

Owing to the negligence of the man in charge, he failed to stop the winding up of the cable raising the smaller hook, with the result that it was carried up to the drum, and, being unable to pass through, such strain was placed upon the cable that it broke, and the hook fell, striking Paskwan
40 on the head, and killing him instantly.

The jury, in answer to questions submitted, has found, in addition to negligence on the part of the man in charge of the crane, negligence on the part of the company, as the master mechanic had failed to instal proper

RECORD.

*In the
Supreme
Court of
Ontario.*

No. 11
Reasons for
Judgment
of Appellate
Division.
—continued

safety appliances. They assess the damages under the Workmen's Compensation Act at \$3,000, and at common law at \$6,000.

Having regard to the evidence given at the trial, the meaning of this answer is plain. It was contended that a safety device could readily have been installed which would have stopped the rotation of the hoisting drum before the hook reached such a position as to place an undue strain upon the cable. The drum was operated by an electric current, and the device suggested was a cut-out mechanism by which the circuit would be broken as soon as the cable was wound upon the drum to the extent necessary to bring the hook to the desired height; thus automatically bringing the machinery to rest in precisely the same way as it would have been stopped by the man in the cage by the operation of the controller under his charge. The controller, it must be borne in mind, is nothing more nor less than a circuit-breaker operated by hand. 10

In answer to this the company alleges that some two years ago a precisely similar accident happened. Its engineers were then instructed to look into the desirability of the suggested safety device. It was stated that extensive investigation was then made, and in the result it was found that the device suggested was uncertain in its operation, and undesirable, as it removed from the operator the sense of responsibility which rested upon him when there was no such device in use, and that with the device accidents would more frequently happen than when the machinery was not so equipped. 20

Upon the hearing of the appeal I was very much impressed by Mr. McCarthy's argument; but a perusal of the evidence has satisfied me that even assuming the legal validity of the contention the facts upon which it is based are not so clearly established as to justify taking the case from the jury. I may even go further, as a very careful perusal of the evidence has satisfied me that the jury came to the right conclusion when they thought, as they evidently did, that this defence was not made out on the evidence, as there is no difficulty in adopting a simple mechanical device by which the circuit must inevitably be broken when the hook reaches a certain height. 30

It was said on argument that this would not bring the hoisting drum to rest, but that it might spin on, and by its own momentum bring about the disaster attempted to be guarded against. But when it appears, as it does here, that the machine is operated by a controller, which, as already stated, is nothing but a circuit-breaker, and that upon the opening of the circuit the brakes are applied, it is quite obvious that the contention is nothing but a subterfuge. One of the witnesses suggests that the device would be dangerous, because when once open it would need to be closed by hand, and this might not be done, thus destroying the protection. But any one having merely an elementary knowledge of mechanics can see that it would be perfectly simple to have a device which would be automatically made ready for action as soon as the hook was again lowered. 40

It was shown, and not contradicted, that devices of this kind have been successfully installed, and are in use upon precisely similar hoists in

precisely similar buildings. All this shows that the case could not have been taken from the jury, and we cannot interfere with the jury's findings.

The appeal must be dismissed with costs.

BOYD, C.:—I agree.

LEITCH, J.:—I agree.

RIDDELL, J.:—This is not the case of employers in view of an accident having taken reasonable care to investigate the proper means to prevent the recurrence of another; and being informed by authority, apparently competent, that the existing system was the best which could be installed.

10 Nor is it the case of witnesses called for the plaintiff admitting that opinions might well differ as to the scheme suggested by them being better than that adopted by the defendants.

Nor is it the case of machinery being bought of a reputable firm and used without any notice or knowledge of defect.

There is nothing more in this case, as I view it, than a defective piece of machinery, which certain witnesses swear may be perfected and rendered safe by a simple and easily understood device; and the defendants' witnesses disputing the efficiency of such device. I see nothing that a jury should not be allowed to pass upon.

20 I agree that the appeal should be dismissed, and with costs.

RECORD.

—
In the
Supreme
Court of
Ontario.

—
No. 11.
Reasons for
Judgment.
of Appellate
Division.
—continued

RECORD.

IN THE SUPREME COURT OF ONTARIO.

*In the
Supreme
Court of
Ontario.*

BETWEEN:

No. 12
Notice of
Appeal to
the Privy
Council.

KATE PASKWAN,

PLAINTIFF,

AND

THE TORONTO POWER COMPANY, LIMITED,

DEFENDANTS.

TAKE NOTICE that the above named defendant intends to appeal, and hereby appeals, by virtue of the statute 10 Edw. VII., chapter 24, section 2 (Ontario), from the judgment pronounced herein by the Appellate Division of the Supreme Court of Ontario, dated the 5th day of February, 1914, to the Privy Council. 10

Dated at Toronto, this 17th day of February, 1914.

McCarthy, Osler, Hoskin & Harcourt,
Solicitors for the Defendants.
To Samuel King, Esq.,
Agent for Alexander Fraser, Esq., K.C.,
Solicitor for the Plaintiff.

IN THE SUPREME COURT OF ONTARIO.

THE HONOURABLE MR. JUSTICE MACLAREN,
in Chambers.

Tuesday, the 24th day
of February, 1914.

RECORD.

*In the
Supreme
Court of
Ontario.*

No. 13
Order as
to Security
for Costs.

BETWEEN :

KATE PASKWAN,

PLAINTIFF,

AND

THE TORONTO POWER COMPANY, LIMITED,

DEFENDANTS.

10 UPON the application of counsel for the defendants, in the presence of
counsel for the plaintiff, for an order allowing a bond in the penal sum of
\$14,000.00 filed herein as good and sufficient security that the said defend-
ants will effectually prosecute an appeal to His Majesty in his Privy Coun-
cil from the judgment of the Appellate Division of the Supreme Court of
Ontario, pronounced on the 5th day of February, 1914, and for an order
granting leave to appeal; upon hearing read the Notice of Appeal, the said
judgment, and the affidavit of A. W. Langmuir, filed, and upon hearing
counsel aforesaid;

20 1. IT IS ORDERED that the bond filed herein by the defendants be
and the same is hereby allowed as good and sufficient security that the de-
fendants will effectually prosecute its said appeal to His Majesty in his
Privy Council, and will pay such costs and damages as shall be awarded in
case the said judgment shall be affirmed, or in part affirmed, and that leave
to appeal be and the same is hereby granted.

2. AND IT IS FURTHER ORDERED that execution be and the
same is hereby stayed pending the said appeal.

3. AND IT IS FURTHER ORDERED that the costs of this applica-
tion be costs in the said appeal.

Issued 26th February, 1914.

30

N. F. PATERSON,
Registrar.