

Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW
SUIT NO. C.L. 1992/W008

BETWEEN	JUNIOR WALKER	PLAINTIFF
A N D	ALCAN JAMAICA LIMITED	DEFENDANT

Hector Robinson instructed by Patterson, Phillipson & Graham for the Plaintiff.

Ransford Braham & Susan Risdén-Foster instructed by Livingston, Alexander & Levy for the Defendant.

Heard: May 25th, 26th, 27th, 28th, 1999; November 9th, 10th, 11th, 12th, 1999 and 19th May, 2000.

Pitter, J.

In this action the plaintiff seeks to recover damages against the defendant, for personal injuries sustained by him during the course of his employment to the defendant. The claim is founded in negligence and/or breach of statutory duty under the Factories Act 1937 and/or the Occupiers Liability Act 1957. The plaintiff also seeks to recover damages for breach of contract for unlawful or wrongful dismissal.

Alcan Jamaica Limited is a company engaged in the mining and processing of bauxite to alumina at its plant at Kirkvine in the parish of Manchester. The plaintiff was employed to the defendant as a process operator, from September 1990. It is his claim that during the course of his employment, he was exposed to dangerous and hazardous substances and chemicals which were injurious to his health, resulting in injury to his

right eye, causing impaired vision and that the defendant failed to provide him with adequate and effective protective gear to protect his eyes from the effects of chemicals, radiation, fumes and dust.

It is further claimed that in or about the month of June 1991, the defendant without offering the plaintiff an opportunity to be deployed in another area of its operation, made the plaintiff redundant, thereby unlawfully and/or unfairly and/or wrongfully dismissing him from his employment.

The defendant denies that the process of bauxite to alumina exposed the plaintiff to dangerous and hazardous substances and chemicals which resulted in injury to the Plaintiff's right eye. The defendant also denies the wrongful dismissal of the plaintiff.

It is the plaintiff's evidence that he commenced working with the defendant in September 1990. He was required to undergo a fitness test, which entailed detailed medical examination including eye and ear test and was found mentally and physically suitable for the job. He was in good physical health when he started working. He said that in the course of orientation he received on-the-job-training which lasted for two (2) weeks and was thereafter assigned to the post of process operator to operate section 7(E) of the precipitator building.

In the precipitator building are large tanks known as precipitators, each measuring about ninety feet high by fifteen feet fifteen inches in diameter, the main body being

cylindrical with a conical base. They are all uncovered. His job was to fill, seed and dump the precipitators, and to do so he had to work from the top floor for the filling and seeding, whilst the dumping was done from the ground floor. He had to encounter heat and fumes during the filling and seeding operations. The tanks are filled with a chemical solution the components of which are basically aluminum trihydrate particles suspended in caustic soda at high temperatures under high pressure. To this is added a chemical compound known as the crystal modifier which carries a foul odour.

He said that from the first day he started working, he was issued with a pair of rubber boots, a helmet, a pair of mono-goggles, a pair of rubber gloves, a flashlight, a raincoat and an adjustable wrench with instructions on their use. He was required to wear the boots on entering the precipitator building and to wear the mono-goggles at all times to protect his eyes.

The plaintiff testified that after working four (4) months at his job, he began feeling facial pains, firstly to his nose and behind his right eye mainly. He said he had problems with his sinuses, which manifested themselves in the sinuses draining down the back of his throat from time to time and sometimes down in his stomach. Because of the symptoms he was experiencing, he sought medical advise and was referred to a specialist, Doctor Marlene Smith, who treated him.

He visited her on a regular basis for treatment some twelve times and on one occasion was sent to do a Catscan, after which she prescribed glasses and was given ten (10) days sick leave. During the period he had been seeing her, he began to experience loss of vision. After the glasses were prescribed, there was some improvement to his vision, but the facial pains remained.

He said that when he first started feeling ill, he brought this to the attention of Mr. Danny Bailey a shift supervisor, who recommended the use of a respirator, which he received and which he wore at all times resulting in less respiratory problems.

He said that symptoms he complained of were never experienced before he started working with the defendant. He does not see properly from his right eye even though he is wearing glasses, albeit with some improvement. This impaired vision prevents him from doing the things he used to do. He avoids driving at nights as vision in the right eye is reduced dramatically. He plays little cricket now, reads less because of the strain placed on his eyes.

He went on sick leave on the 13th May 1991 and when he went back to work he was asked to produce a 'fit to resume certificate' which he did, but was told that his services were terminated as it was clear he had not adapted to the conditions under which he was required to work.

He collected his pension fund contributions as he was instructed to do and has not received any other payment from the defendant company. No disciplinary proceedings were ever

taken against him and at that time was earning (\$750.00) per week. It took him two years before landing another job. He said he was not given a letter of termination, nor was he given any advice as to when his employment would be terminated. He said he did not know he was on probation at the time.

In cross examination he admitted receiving a **"declaration by an employee accepting temporary employment"** which he signed when he started working with the defendant in September 1990. He agreed he was temporarily employed when he took up the job. He also agreed that on the 15th March 1991, he was permanently employed with a condition that he would be on probation for a period of seventy five days and had signed a document known as **"condition of employment condition"**. He denied that he was sent to a particular area of the precipitator building known as Egypt and had refused to report for work there. He denied that on the 13th May 1991, he was sent there on the instructions of his supervisor, who determines where he would work.

He also denied that Mr. Gayle the area supervisor instructed him to comply with this directive and he refused. He said that on or about the 15/5/91, he didn't work in the precipitator building or any part of it. It was not because he didn't want to work there, it was because he was ill and had to see the Doctor, who gave him ten (10) days sick leave. He did not present himself for work that day. On his resumption, he was asked to produce his fitness to resume certificate, which he did but was told by Mr. Gayle that because of his illness his

services would be terminated.

During the time he worked in the precipitator building he wore the goggles issued to him at all times. He was also provided with dusk masks, which he wore. He maintains that it is the crystal modifier that affected his health in particular his eyes. He rejected the suggestion that the illness to his eyes sinusitis and malaise were not caused by his presence at Alcan.

Doctor Carl Hamilton a registered medical practitioner, who specializes in ophthalmology, and has been practising in that discipline since 1997, gave evidence on behalf of the plaintiff. He said he examined the plaintiff on the 6th March 1998, and again on the 25th February 1999. On his first examination he found the plaintiff to have 20/25 vision in his right eye and 20/20 in the left eye with glasses. No tests were done without glasses. He diagnosed him as having near-sighted astigmatism in his right eye. The left eye had a lesser degree of astigmatism and near-sightedness. His intra-ocular pressure was normal as were the optic nerve and retina. Visual fields testing was normal in the left eye. Tests showed about 10% field loss with generalised constriction. The significance of the 10% field loss with generalised constriction is a determination that the plaintiff had a degree of optic nerve injury to his right eye. He came to his conclusion as a result of the history the plaintiff gave him which was that "in 1991 he started to have intermittent blurring of the vision in his right eye, dullness of vision,

difficulty in seeing in the dark and side vision imparied. This condition was associated with pain and swelling of both eyes. He experienced skin rashes, weight loss and malaise over the period of time he was having his eye problem, which had only gradually improved after he had left his job."

He said he did a further evaluation of the plaintiff, when he saw him again on the 25th February, 1999. He repeated the visual field testing which confirmed his earlier finding. He diagnosed that the Plaintiff had a past history of optic neuritis affecting the right eye. He describes optic neuritis as an inflammation of the optic nerve, the commonest cause being a demyelenating disease of unknown cause, a disease which manifests itself in the loss of myeling sheet around the optic nerve, which results in impaired vision. Certain infections, injuries, toxins and other unknown properties can cause losses of the myeling sheet. Other causes may be due to infections such as syphillis, tuberculosis, virus with herpes gloster (chichen pox). The blood vessels that supply the nerves may be inflamed, a condition known as scarcondlosis, one of the auto-immune diseases. Drugs, vitamin deficiency and other toxic agents could also be a cause. He said that the history the plaintiff gave suggest a generalised illness at the time when the eye problems started; which seemed to have been accompanied by sinusitis. On that basis, he said the blood vessels supplying the optic nerve to the right eye became inflamed, causing a swelling of the nerve and the subsequent visual impairment. It is unusual for this to happen.

Loss of vision in one eye as opposed to both is significant, possible optic neuritis in one eye. Often times the sinus is affected on one side more than the other. Astigmatism in the right eye in no way relates to optic neuritis. The loss of vision found in the plaintiff leaves a disability of 5% of his vision and cannot be improved by any treatment.

In his examination of the plaintiff, he saw no evidence of optic atrophy, where there is damage to the optic nerve such as optic neuritis. The lack of atrophy in cases of optic neuritis is unusual. He said plaintiff had peripheral field loss. He used an ophthalmoscope to look into the plaintiff's eyes, where he could see a magnified image of the inside of the eyes. He agreed that ultra-sound and cat-scanning are other ways of examining the optic nerve.

On the history the plaintiff gave, he came to the view that the plaintiff actually had his attack in 1991, that is seven years before he saw him. If in 1991, he had an attack of optic neuritis, the optic nerve would have been affected. He said that it was more likely to have made a more certain diagnosis at the time if he had seen him then.

Further cross-examined he said that if during that period a cat-scan was done while the disease was attacking the nerve, he would have a better diagnosis and from a medical point of view, it would have been better to have see the patient whilst the disease was active. Findings such as atrophy take time to develop usually eight to nine years would be sufficient.

He agreed that when he saw the plaintiff in 1999, he was in a disadvantageous position in terms of making a diagnosis. He could not say in 1991, the plaintiff did not have optic neuritis. He did not do a cat-scan or X-ray of the plaintiff. The cause of optic neuritis are wide ranged and variable. When a diagnosis is made eight to nine years after an event, it would be intuitive. He said it is very difficult to diagnose the cause of optic neuritis, even when fresh, as opposed to eight to nine years later.

He determined that the plaintiff may have had a generalised illness. After the history he gave he did not come to his conclusions on a study of the plaintiff. Sinusitis is a cause of optic neuritis. He does not agree that the worst sinusitis can do is to cause swelling around the eyes. With glasses, the plaintiff suffered 5% vision loss. Peripheral vision loss can also be caused by retinal degeneration of the affected eye, the most common situation.

He also found that the plaintiff suffered from myopic astigmatism, that is shortsightedness. This condition is more likely to be hereditary, but is not the reason for his present vision. This condition is not brought about by sinusitis or anything like that. The plaintiff's principal problem is myopic astigmatism. Peripheral field vision affects the right eye only. Optic neuritis in one eye only, most likely to be caused by demyelating disease.

Fitted with his glasses, he would expect the plaintiff to carry on his job as a lab technician or a teacher, and would be able to carry on his usual day to day life.

Ray Davis, a control room technician, testified that in 1991, he was acting as a supervisor at Alcan Jamaica Limited, where he was employed. On the 10th May 1991, he was the Plaintiff's supervisor and that day he told the plaintiff he should work at the precipator building, Section 37E known as Egypt, starting on his next shift on the 13th May, 1991. He said that the plaintiff, though dressed for work did not do as instructed. He requested to see the area supervisor Mr. Gayle and was allowed to, and who told him he had to follow the instructions of the witness. He was not seen at the plant again until the 26th May, 1991, and not since then. He said that at the commencement of the plaintiff's employment he was given safety equipment, the same as those given to other employees, which includes boots or leather shoes, gloves, mono-goggles or safety glasses, dusk mask or respirator if required, rain cloak, face shield (depending where one works) ear muffs, ear plugs if working in a noisy area. The types of dusk mask and mono-goggles were exhibited in evidence.

Cross examined Mr. Davis said that he told the plaintiff to go to Egypt and he did not go, and did not give a reason for not going. He said that the plaintiff refused to follow instructions he gave him. He said that the product crystal modifier is used to enhance the growth of the seeds. It is a liquid pumped in the stream of the filling liquor.

It is taken in a container connected to a pump which would pump it into the filling liquor. The line that takes it to the precipitator - the filling liquor is pumped from the filling tanks to the precipitators. The crystal modifier is no longer used. He denies that there was a pipe hanging over the precipitator from which the crystal modifier is pumped.

Merlene Forde-Smith, a registered medical practitioner and consultant ophthalmologist saw and treated the plaintiff and examined him, for the first time on the 22nd March, 1991. At that time he complained that he had not been seeing clearly from his right eye for the past three months and that there was discomfort behind the eye.

On examination she found that unaided his visual acuity was 20/100 in the right eye and 20/20 in the left eye. With lenses he achieved 20/40 vision in the right eye, there was no need for correction in the left eye. The correction was that of myopic astigmatism, that is, shortsightedness. No other abnormalities were noted, there was no double vision, no squinting, no redness of the eye, no sign of inflammation. From the history he gave, she thought he might have some sinusitis of an allergic nature, with the subsequent referred pain. His blood tests were normal. X-rays done showed mild swelling of the mucosa, which is very typical of allergic condition. He was treated for sinusitis but on a subsequent visit on the 2nd April, 1991 he also complained of pains behind the left eye. He was next seen on the 14th May, 1991, still

complaining saying the treatment prescribed was not working. Another examination was done and the findings were as before, there was no progression. As a result a cat-scan was ordered to determine whether there were any other causes of the problem. The cat-scan would also reveal information to the back of the eye and delineate the nerves of the eyes and all the tissues of the orbit and also the brain. The cat-scan was done on the 20th May, 1991, no abnormality was found in the brain, orbit, optic nerve or globe of the eyes. On the 22nd May, 1991, the treatment of sinusitis continued and glasses were prescribed.

She next saw the plaintiff on the 24th May, 1991, and on examination found no abnormality, except for a mild conjunctivitis, his vision was the same and correction the same. He still complained, this time of pains behind both eyes with watering. She noted that at that time of year (spring) there is always exacerbation of allergic problems as there is an increase of allergies caused by high pollen counts usually affecting the sinuses. Myopic astigmatism is a condition where the patient sees things better near than in the distance. Astigmatism is a problem where the curvature of the cornea is not as smooth as normal so things would be a bit blurred. The plaintiff had two conditions, myopia and astigmatism. She concluded that the plaintiff's vision was impaired including loss of vision, due to his myopic astigmatism. Impaired vision acuity takes into account central vision and loss of vision takes into account central and peripheral vision.

Myopia and astigmatism are congenital, something you are either born with or have the potential to develop genetically. At the time the plaintiff was examined he was twenty years old. His age is relevant, as when one gets older myopia worsens. However, it is expected to level off at age twenty five years.

It is possible that myopia-astigmatism may develop in the other eye and may also worsen in the defective eye.

Optic neuritis is an inflammation of the optic nerve. In the majority of cases, no cause can be found. This is a condition where vision is decreased and cannot be corrected with glasses and vision may not be improved. Optic neuritis was not present in the plaintiff. His vision had improved four times up to his last visit. There was no pain on movement of the eye which is typical of optic neuritis as it stretches the nerves and when inflamed pain would result. The cat-scan showed the nerves were normal which eliminates optic neuritis.

In 1998 and 1999 if the plaintiff was suffering from myopic astigmatism, this is not surprising as the myopia could be progressive. She did no field test of the plaintiff as his condition at the time did not warrant this.

She said the history the plaintiff gave her did not necessarily suggest nerve injury. It suggests a systemic illness, which is not indicative of optic neuritis. Systemic illness could be a virus of the influenza type or german measles. Doctor Forde-Smith says she could not come to a conclusion based on the patient's history of what might have taken place seven years previously.

Anything causing systemic illness would usually cause neuritis in both eyes. Optic neuritis has nothing to do with myopic astigmatism.

She regarded Doctor Hamilton's assessment as intuitive and speculative.

Cross examined she said that when she first saw the plaintiff, she specifically looked for damage to the optic nerve and a comparison was made between both eyes. Based on the treatment she gave the plaintiff, she found he had sinusitis and allergic rhinitis, the same causative in the two sinusitis could be caused by exposure to cigarette smoke, exhaust from the road, perfumes, fumes of whatever type, whether in chemical plants or laboratory, dependent on the person and how they react to different things. All depends on their individual make up.

She is not surprised that the plaintiff now suffers loss of peripheral vision, which could be caused by many things including myopia and trauma.

In relation to optic neuritis one cannot ascertain what the cause is.

Jerome Miles is a business development manager at Alcan Jamaica Limited. He started working with the defendant as a corporate industrial hygienist. He began his career as a plant shift supervisor at Industrial Chemical Company, which produces sulphuric acid from September 1980 - September 1981. The next five years he worked at Alpart as an Industrial Hygienist. After that he worked for two years at University

of the West Indies as a Research Chemist. He then moved on to Seprod, where he was a Management Trainee, from May to December 1987 and prior to working with Alcan, he was Industrial Hygenist at Caribbean Cement Company, where he worked for one year. Since then he has been working with the defendant company.

As an Industrial Hygenist, he is an environmentalist, who specialize in the work place environ, with particular focus on exposures that affect employees' health, identifying measures to reduce or eliminate the hazards.

Before working at Industrial Chemicals Company, Mr. Miles held a BSC degree from the University of the West Indies, majoring in chemistry. He then secured a diploma in occupational health and safety from McMasters University in Canada, where he studied toxicology, and became a certified Industrial Hygenist from the America Board of Industrial Hygene.

He testified that in 1991 when he was stationed at Alcan Kirkvine Works as an industrial Hygenist, where the bayer process was used for processing bauxite into alumina. In that process the bauxite is mined, transported to the plant and then mixed with warm caustic soda. The mixture is then heated in order to dissolve the alumina in the bauxite in the caustic soda solution. The next stage is to seperate the alumina in solution from the red-mud residue. After that stage the liquid portion is filtered and then sent to the precipitation area. The pregnant liquid is then pumped into large tanks and seed added i.e. aluminium-hydrate which has already been precipitated;

the mixture is then allowed to stand for twenty hours to allow the aluminium-hydrate to precipitate from the solution. The precipitation area is a building made up of a large number of tanks, about eight per building which is partially covered with openings above the tanks themselves, the tanks being between 60' - 70' tall and 15' in diameter; there are two principally working areas, the ground and the top floor. The top floor 4' below the level of the top of the tank. Employees work in the precipitation area. They are required to start the equipment, open and close valves and also to take measurements in the tanks. The top floor would be warm with temperatures of between 30° - 38° celcius. It is humid with lots of water vapour in the atmosphere.

The bottom floor would have temperatures similar to the top floor with very little water vapour and less humidity. During the production process, that is, the opening and closing of valves and starting will not produce any atmospheric emissions. The opening and closing of valves particularly when tanks are being filled will produce some vapour in the atmosphere which is primarily water vapour but may have traces of caustic soda. He said that in 1991 he was involved in a study along with other industrial hygenists in alumina plants worldwide to measure the concentration of caustic dusts and mists in the working environment including the precipitation area and all other working areas in the plants. Samples were taken from the atmosphere by attaching samples to employees while they were actually doing

the job in order to accurately measure what employees were exposed to while on the job.

The findings showed that levels of exposure were in every case less than $\frac{1}{2}$ the legally required exposure limit, that is two milligram per cubic meter. He concluded that by being present in the precipitation building workers would not be exposed to chemicals injurious to their health. Workers would not be exposed to radiation at all. Based on the measurements he did there were no fumes that would cause any level of injury. There were no dust or impurities at a level to cause health injury. There were no impurities air-borne or significant in the precipitation building to cause harm. He said that aluminium trihydrate is only hazardous to the health of an employee if it is applied to the mouth or eyes directly as it contain traces of caustic soda which is a correosive acid. Crystal modifier is a term used to describe chemicals added to the precipitation tank in order to further the growth of aluminium trihydrate and aluminium crystals. It is applied by pumping it from a tank injected into the filling line which takes the pregnant liquor into the precipitator. The crystal modifier is not hazardous to the employee in particular to their eyes. It is used in many plants over the world and that he has never come across a complaint where it has caused damage to the eyes. Each precipitator is given a precise dose. He is not aware of any item that is dangerous or injurious or hazardous to the health

of employees in the precipitator building.

In 1991 all employees were issued with personal protective gears. Those in the precipitator building must wear (1) a hard hat, (2) chemical safety goggles o/c mono-goggles, (3) rubber gloves whilst working, and (4) rubber safety boots. These are given to employees when they start working and they are not allowed to work without them. In addition there are two types of respirators available to them. The wearing of respirators is however not mandatory as the measurements of air-borne chemicals were low and not harmful to employees. The existence of hazardous conditions will depend how long employees are exposed to the potential hazard, what is the concentration of the hazard he is exposed to and how toxic or how dangerous the hazard is.

The level of exposure in the precipitation building and the plant was not of such as would cause injury to the eye. Cross-examined he said that some persons are more sensitive to chemicals to which they may be exposed than others. Prior to employment of an employee a medical test is done to determine whether such an employee is sensitive to the substances at the plant. He said that the process operator opens a valve which allows the solution which comes in at a certain pressure to flow into the tank. It takes 1 - 3 hours to fill a tank depending on how many tanks are being filled. When the valves are open the solution flows into the tank up to a maximum of 180°F or 70° celcius. Because the filling goes to the bottom and with the depth of the tank any fumes that would be generated

by splashing would not get up to where the operator is standing. The temperature of the solution would not produce steam.

Dr. Donovan Calder, a consultant ophthalmologist testified that he met the plaintiff at the University of the West Indies Hospital on the 8th April 1999 and again at his office on the 10th May 1999. He found him to be very myopic astigmatic in both eyes but worse in the right eye. In his left eye he could achieve 20/20 vision whilst in the right eye the best corrective vision would be 20/25. He found the visual field in the left eye to be normal whilst that in the right eye showed some peripheral field loss. His total field deficit was 1% or less. His examination did not find the plaintiff to have optic neuritis. There was no evidence that this condition existed previously. The plaintiff did not have central field loss he had peripheral field loss. He said that the causes of optic neuritis is commonly caused by demyelinating disease or herpes such as multiple sclerosis. He said that sinusitis is no longer considered to cause optic neuritis. The loss of peripheral vision is a typical finding with regard to optic neuritis. He said that aluminium trihydrate is not associated with the cause, neither is caustic soda or crystal modifier and radiation fumes.

Findings

1. I am satisfied by the evidence that the plaintiff was supplied with adequate protective gears by the defendant from the commencement of his employment with the defendant as a process officer.

2. There is also no evidence of any manufacturer's recommendations as to what equipment should be worn.
3. There is also no evidence that an employee in the capacity of the plaintiff should not work more than eight hours per day.
4. I find the witness Jerome Miles to be an expert in his field and I accept his evidence that the defendant provides a safe working environment for workers and in particular the plaintiff.
5. The evidence of Dr. Smith is preferred to that of Dr. Hamilton.

Medical Assessment

Dr. Hamilton who examined the plaintiff some eight years after he first complained about the illness to his eyes is of the opinion that the plaintiff suffered optic nerve injury to his right eye. He came to this conclusion as a result of the history the plaintiff gave him. He saw no evidence of optic atrophy. He agreed that when he saw the plaintiff in 1999 he was in a disadvantageous position in terms of making a diagnosis. He also found the plaintiff suffered myopic astigmatism a condition more likely to be hereditary, but not the reason for his present vision.

Dr. Smith first saw the plaintiff in March 1991 when he started complaining about his eyes. This was followed up by several visits thereafter. She diagnosed him as suffering from myopic astigmatism in the right eye and prescribed treatment.

Her diagnosis was aided by the use of cat-scan and X-rays. She has ruled out optic neuritis as the plaintiff's illness and this conclusion is supported by Dr. Calder who also examined the plaintiff.

The evidence of Drs. Smith and Calder is preferred to that of Dr. Hamilton and I find on a balance of probabilities therefore that the plaintiff's eye condition is not as a result of optic neuritis.

I further find that the plaintiff suffered myopic astigmatism which is likely to be hereditary and that his present illness is not related to his employment with the defendant as a process operator.

Wrongful Dismissal

Mr. Robinson for the plaintiff recognises the existence of the conditions of employment declaration to which the plaintiff is a signatory but contends that the fact that the defendant is not obliged to assign a cause, it does not permit them to dismiss the plaintiff for no cause, and notwithstanding that the plaintiff was on probation, he had a right to be treated fairly.

Mr. Braham referred to Exhibit 5 in particular to paragraph two thereof which states.

"I understand that I will be on probation for seventy-five (75) calendar days from the date of my engagement and that, during this period, the company may terminate my employment without notice and without assigning a cause."

He contends that the defendant was within its rights in keeping with the terms of the contract to terminate the employment of the plaintiff without notice and without assigning the cause. However, he referred to the evidence of the plaintiff himself who said that Mr. Davis communicated to him that "because of his illness he had no alternative but to terminate his services as it was clear he had not adapted to the conditions under which he was required to work."

Section 3 (4) of the employment (termination and Redundancy Payments) Act provides:-

" (4) where the contract of employment specifies a period, commencing on the date of commencement of employment, as a probationary period, either party to the contract may, notwithstanding the provisions of subsections (1) and (2) terminate the contract without notice during the probationary period or, where the probationary period is more than ninety days, during the first ninety days thereof."

I uphold the submissions made by Mr. Braham and find that the defendant was within its rights to terminate the services of the plaintiff as it in fact did, and hold that the plaintiff was not wrongfully dismissed.

Conclusion

The plaintiff having failed in his claim for negligence, breach of statutory duty under the Factories act, or the

Occupiers Liability Act, and for wrongful dismissal, there will be judgment for the defendant with costs to be agreed or taxed.