

had escaped to the platform in falling from the hopper from rolling over the edge of the platform if it rolled that far. The facts, it seems to me, therefore, put defendants into this difficulty. If the derrick was safe with ordinary care, without any fence along the edge of the platform, then there must have been a lack of ordinary care on the part of defendants or their servants for which defendants are liable. On the other hand, if coal was liable to escape even with the exercise of ordinary care, defendants were negligent in not having a fence along the edge of the platform to prevent it from falling down.

Appeal allowed with costs, and judgment to be entered for plaintiff for \$1,000 with costs.

BRITTON, J., gave reasons in writing for the same conclusion.

FALCONBRIDGE, C.J., concurred.

APRIL 28TH, 1903.

DIVISIONAL COURT.

HARRISON v. HARRISON.

*Contract—Construction—Agreement to Farm on Shares—Account—
Appeal—Contradictory Evidence—Findings of Fact—Costs—Discretion.*

Appeal by defendant from judgment of County Court of Prince Edward in favour of plaintiff for \$50.29 with County Court costs.

Plaintiff was the son of defendant, and had rented from him on shares a farm and some stock and implements. Plaintiff and defendant disputed afterwards as to what were the terms of their bargain, and as to certain matters of account, and this action was brought to determine the dispute. There was also a counterclaim by defendant. The case was tried without a jury, and the evidence was contradictory.

The appeal was heard by STREET and BRITTON, JJ.

P. C. Macnee, Picton, for defendant.

C. H. Widdifield, Picton, for plaintiff.

THE COURT refused to interfere with the findings of the Judge of the County Court, and also declined to interfere with his discretion in awarding the plaintiff County Court costs, although the amount recovered was within the Division Court jurisdiction, and in giving no costs of the counterclaim; but varied the final judgment so as to make it correspond with the findings of the Judge; and, subject to this variation, dismissed the appeal without costs.