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No. 1

APPELLATE DIVISION.

MARCH 1ST, 1915.

STUMPF v. PULLEYBLANK AND STEPHENS.

Master and Servant—Death of Servant—Negligence—Findings of Jury—Appeal—Evidence—Nonsuit—Building Trades Protection Act, R.S.O. 1914 ch. 228, sec. 6.

Appeal by the defendant Stephens from the judgment of MAGEE, J.A., upon the findings of a jury, in favour of the plaintiff, for the recovery of \$2,000, in an action by the administrator of the estate of Michael Stumpf, deceased, for damages for his death, caused, as alleged, by the negligence of the defendants.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

R. T. Harding, for the appellant.

T. L. Monahan, for the plaintiff, respondent.

The judgment of the Court was delivered by FALCONBRIDGE, C.J.K.B.:— . . . A church was being built at Mildmay, in the county of Bruce. The plaintiff's husband, walking underneath certain scaffolding to proceed to work for the defendant Stephens, was killed by the collapse and fall of the said scaffolding. The scaffolding was erected and maintained by the defendant Pulleyblank. The defendant Stephens and his men had used it in order to carry out his contract with the church, which was that of plastering. His work, as far as the use of the scaffold was concerned, was done, but he was finishing his contract in another part of the church.

Questions were put to the jury—the only one involving any liability on the part of Stephens being as follows: "In what did