the Schacht company, and that the agreement cannot be carried out unless and until the exchange of shares between the Schacht company and the Monarch company can be completed, and that the defendants are not responsible for the failure of the completion of the contemplated exchange. Muntz denies liability upon his so-called guaranty, and substantially repeats the same allegation as set up by the company.

At the hearing, both counsel insisted that the litigation had been settled. Although the Schacht stock has not been handed over, it is available to the plaintiff. His real grievance is, that he has not obtained, and manifestly cannot obtain, the stock in the Monarch company. The Schacht company is worth nothing, and the Monarch company stock is, if possible, worth less. Specific performance is out of the question, and damages can be nothing more than nominal, as the plaintiff is not injured by failure to receive one worthless thing in exchange for another of no value.

This view of the case renders it unnecessary to determine whether there ever was any obligation on the part of the company or on the part of Muntz. The proper solution of the difficulty appears to me to be to dismiss the action without costs. If I should award nominal damages, I would not give costs; so that the precise form of judgment is not material.

PHILLIPS v. CANADA CEMENT CO.—FALCONBRIDGE, C.J.K.B.—DEC. 8.

Master and Servant—Injury to Servant—Action for Negligence—Findings of Jury—Contributory Negligence—Nonsuit.]—Action by a workman employed by the defendants in their works to recover damages for injuries sustained by him by reason of an air-drill which was being moved by his fellow-workmen toppling over and falling upon him. The action was tried with a jury at Belleville. The learned Chief Justice, referring to the finding of the jury that the foreman was guilty of negligence, said that there was no indication by the jury as to wherein the negligence of the foreman consisted, and it would be difficult to point it out. The plaintiff sat down by the fire, with his back to the air-drill, when, he said, the defendants' servants were either moving the air-drill or had just stopped; and his own witness Schriver said that they had finished moving it when the plaintiff sat down. He paid no atten-