

fluctuations, and undertaking to act for such subscribers, as purchasing agents, at lowest possible prices, the books, etc., not contained in such catalogue. The certificates were not transferable and were only available to subscribers for their personal and family use and benefit. Before the expiry of the above period a liquidation order was obtained for the winding up of the company, whereupon certain subscribers claimed to be placed on the list of contributors for damages alleged to have been sustained by them through the company's failure to supply them with books, etc., during the residue of the term.

*Held*, that only nominal damages were recoverable, for beyond this the damages were too speculative or conjectural to be maintained; nor could any part of the subscriptions be recovered back on the ground of it being unearned.

*H. T. Canniff*, for appellants. *J. T. Scott*, for liquidator.

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From Divisional Court.] *BISNAW v. SHIELDS*.

[Jan. 25.]

*Negligence—Coal derrick—Unfenced sides—Falling coal—Accident.*

The defendant was the owner of a derrick for hoisting coal from vessels, which was drawn up by a bucket, and emptied into a hopper at the top of the derrick. Under the hopper was a platform with an opening in it across which there were rails for a tram car into which the coal was loaded, when it was desired to weight it, the coal being then dropped through the opening into a lower hopper; but when the weight car was not in use the coal fell directly from the upper hopper through the opening into the lower hopper. The sides of the platform were three feet nine inches from the opening, and were not fenced so as to prevent coal from falling over its edge. There was a ladder from the corner of the platform to the ground, and though not the ordinary means of access to and from the derrick, was being properly used by the deceased, one of the employees, who, when on his way to inspect a vessel then being unloaded, was struck on the head and killed by a piece of coal, which had fallen from the platform. The derrick had been in use for fifteen years without the occurrence of any similar accident, or proof of any coal having previously fallen from, though occasionally falling on, the platform. In an action by the administrator to recover damages by reason of the death of the deceased,

*Held*, that the unfenced sides of the platform were obviously a cause of danger, which was necessarily increased by the existence of the rails across the opening, causing coal striking them to be driven outward, and that the plaintiff was therefore entitled to recover. Judgment of the Divisional Court affirmed.

*Du Vernet*, for appellants. *J. B. Clarke*, K.C., for respondents.