

injuries were caused by the negligence of a co-employee or fellow-servant of equal rank.

The attention of the learned Judge was not called to the provisions of the Buildings Trades Protection Act, 1 Geo. V. ch. 71, sec. 6, now R.S.O. 1914 ch. 228, sec. 6, nor to the decision in *Hunt v. Webb* (1913), 28 O.L.R. 589, which is decisive against the respondent. The finding of the jury that the defect in the scaffold did not arise from any negligence of the respondent must be set aside, as their attention was not directed to the liability arising out of the breach of statutory duty.

The appellate Court having before it all the materials necessary for the determination of the matters in controversy relating to the question of liability, it was not necessary to send the case back for a new trial. The statutory duty having been neglected, the Court was enabled to give the proper judgment. The finding of the jury should be set aside and the judgment vacated, and in place thereof there should be a finding that the respondent was liable on account of the breach of the duty created by the Act referred to, and directing judgment for the appellant for \$300, with costs of the action and appeal.

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FIRST DIVISIONAL COURT.

JANUARY 10TH, 1916.

\*RÉAUME v. COTÉ.

*Declaratory Judgment—Limitation of Actions—Possession of Land—Limitations Act, R.S.O. 1914 ch. 75, sec. 12—Declaration of Title—Judicature Act, sec. 16 (b)—Discretion.*

Appeal by the defendants Aggie Côté and Jennie Réaume from the judgment of SUTHERLAND, J., ante 17.

The appeal was heard by GARROW, MACLAREN, MAGEE, and HODGINS, JJ.A.

J. H. Rodd, for the appellants.

J. Sale, for the plaintiff, respondent.

GARROW, J.A., delivering the judgment of the Court, said that the plaintiff was in possession of the land in question, and the action was brought to obtain a declaration that she was entitled in fee simple as against the defendants. The plaintiff's alleged title, as against them, was solely derived by length of