

sir. Q. Knew its danger when you were up-stairs? A. Yes, sir, but really could not realize that I was to be called on to be so close." No one told him how or where to place the stepladder. That was entirely his own doing, just as stepping into the opening was his own mistake.

I therefore agree with LATCHFORD, J., that there was no evidence of negligence on the part of the defendants, and that the appeal should be allowed and the action dismissed, both with costs if demanded.

W. T. Henderson, for the defendants. W. S. Brewster, K.C., for the plaintiff.

HIGH COURT OF JUSTICE.

Riddell, J.]

JOHNSON v. BIRKETT.

[June 10.

Evidence—Examination of plaintiff for discovery—Death of plaintiff—Continuation of action by executor—Tender of depositions of deceased as evidence on behalf of executor—Principal and agent—Moneys intrusted to agent for purchase of stock—Purchase of stock by agent on his own behalf—Intention to appropriate part to principal—Absence of evidence of good faith and information given to principal—Scale of costs—10 Edw. VII. c. 30(O.).

This action was brought in September, 1908, for the return of \$500 alleged to have been paid by her to the defendant in 1906. After the pleadings had been delivered, i.e., in February, 1909, she was examined for discovery. She died in December, 1909, and her executor obtained an order to continue the action in his name. The action was tried before RIDDELL, J., without a jury.

The plaintiff offered as evidence the examination for discovery of the deceased Mrs. Johnson. The defendant objecting, the trial judge allowed the examination to be marked for identification only, and the trial proceeded. The plaintiff then read certain parts of the examination for discovery of the defendant, and rested his case. The defendant called no evidence.

RIDDELL, J.:—It becomes necessary to consider whether, in the circumstances, the plaintiff can be allowed to make use of the examination for discovery of the original plaintiff, his testatrix.

It was said in *Drewitt v. Drewitt*, 58 L.T.R. 684, that a motion under the English rule corresponding to Con. Rule 483