

against appellants Archibald to recover \$3,000 damages for injuries which he sustained through the fault and negligence of appellants, while in the exercise of his duties and in the employ of the appellants. He alleged he had suffered from a fall from a ladder on which he had been put to work by the defendants on their premises and whilst in their employ, said injuries resulting on the part of defendants in allowing plaintiff to be exposed to danger in assigning work to him to which he was not fitted by his age, and a kind of work which he was not accustomed to do, plaintiff alleging that the defendants were guilty of wrong-doing and recklessness in causing plaintiff to be exposed to danger by which he met with the accident.

Defendants pleaded that the injuries resulted from plaintiff's own negligence.

The jury found that the injuries resulted from the combined fault of the plaintiff and of the defendants — the plaintiff, by claiming to be a man experienced in the work which he was called upon to do, and for adopting a tool, the primary cause of the accident, which was not in good condition; the defendants, in selecting the plaintiff to do the work in question on account of his advanced years. The damages, fixed at \$2,100, were reduced to \$1,600, owing to plaintiff's contributory negligence.

Before the trial the first panel of jurors became exhausted, and upon an *ex parte* motion on behalf of the plaintiff a new panel of jurors, composed of twelve names, was ordered to issue.

Counsel for the defence objected verbally to the motion, and when the jurors were present in court, objection in writing was made on behalf of the defendants.

Argument was heard upon the motion, and Mr. Justice Guerin, who presided at the trial, decided that the additional panel was legally ordered, upon it having been shown