

FIRST DIVISIONAL COURT.

JANUARY 10TH, 1916.

BENSON v. MAHER.

Master and Servant—Injury to Servant—Defective Scaffolding—Building Trades Protection Act, R.S.O. 1914 ch. 228, sec. 6—Breach of Statutory Duty—Findings of Jury—Evidence—Avoidance of New Trial—Determination of Liability by Appellate Court.

Appeal by the plaintiff from the judgment of the County Court of the County of York in favour of the defendant, in an action for damages for injury sustained by the plaintiff by reason of the collapse of a defective scaffold erected in a building of the defendant, upon which the plaintiff was working at the time of the collapse. The action was tried with a jury, and the judgment for the defendant was entered by the County Court Judge upon the jury's findings.

The appeal was heard by MEREDITH, C.J.O., GARROW, MACLAREN, MAGEE, and HODGINS, JJ.A.

V. H. Hattin, for the appellant.

W. N. Ferguson, K.C., for the defendant, respondent.

HODGINS, J.A., delivering the judgment of the Court, said that the appellant was working upon a scaffold erected for the purpose of enabling joists to be replaced in a building of the respondent which had been damaged by fire. The scaffold was in fact erected by one Buckley, who was a foreman carpenter, but it was not clearly established that he occupied that position in regard to this particular work. The appellant and one Gordon were sent to the work by Cross, who had been told by Tucker, the respondent's manager or superintendent, to engage men for the work to be done, and Buckley was one of these men. The scaffold was erected before the appellant got to the work. The jury found, on sufficient evidence, that the appellant's injuries were caused by a defect in the manner of the construction of the scaffold, but they also found that the defect did not arise from any negligence on the respondent's part, and that the respondent furnished proper materials for the scaffold. They absolved the appellant from contributory negligence. The case went to the jury on a charge by the learned County Court Judge that the respondent was not liable if the