

Full Court.]

[July 14.

FONSECA v. LAKE OF THE WOODS MILLING CO.

Negligence—Liability of owner of unsafe premises for injury to person falling into a hole.

The plaintiff went to defendant's premises on their invitation to examine the roof of the building, and give an estimate as to cost of repairs required. There was a cupola covering part of the roof and having windows at the north and south ends furnishing good light on the floor of the cupola. This floor was reached by a ladder leading up to an opening in the floor, and there was another opening in the door 2 feet 2 inches by 1 foot 8 inches, giving light on the floor below and totally unguarded.

The plaintiff, accompanied by defendants' foreman, ascended to the cupola in broad daylight and viewed the roof through one of the windows. In stepping back from the window, the plaintiff, not noticing the last mentioned opening, fell through it and was injured.

The plaintiff was a contractor for roofing and repairing roof, and accustomed to go upon roof and into attics and unused and unfloored places, where holes and trap doors might exist, and the foreman, though present, did not think it necessary to warn him about the opening which was plainly visible.

Held, that defendants were not liable: *Indermaur v. Dawes*, L.R. 1 C.P. 274, L.R. 2 C.P. 311, distinguished. *Thomas v. Quartermaine*, 18 Q.B.D. 685; *Headford v. McClary*, 24 S.C.R. 291, and *Johnson v. Romberg*, 51 N.W. Rep. 1051, followed.

Full Court.]

CARROLL v. McVICAR.

[July 14.

Mechanics' Lien Act—Sub-contractors' lien when amount payable under building contract only on completion of work—Percentage to be retained from contractor—Series of jobs done under separate orders.

Action by sub-contractor to enforce lien under R.S.M. 1902, c. 110, against the contractor and the owner.

The building contract only provided for payment on the completion of the whole work; and as the contractor abandoned the work before completion, the owner contended that he was not bound to pay anything, either to the contractor or to any sub-contractor, until the whole work was performed. He had, however, made payments to the contractor during the progress of the work amounting to \$750 in all.