

this joist, it broke across the broad surface in a diagonal splinter about 6 feet long, and the plaintiff fell to the ground, receiving serious and permanent injury. As the joists were delivered at the building, they were inspected by the foreman, whom the trial judge found to be an experienced, competent, careful and efficient man. He had rejected quite a number of them for different reasons and the trial judge found that, although he did not submit them to any test, or even to a careful visual examination, his examination was sufficient to ascertain whether they were straight and of the proper length or had any other defects apparent to a person standing by and looking at them as they were being handled. They had also to pass through the hands of a number of other workmen before they were finally placed in position, but no one noticed the defect in that particular joist before the accident.

Held, that the law presumes that there was negligence in making use of such defective material, that the defendants might, however, rebut that presumption by shewing that, in the selection of the joists, they had taken reasonable care to provide against defective materials being used; and that the finding upon the evidence should be that the breaking of the joists was due to a latent or concealed defect not discoverable on reasonable inspection; that the defendants and their foreman had adopted a reasonably sufficient mode of inspection and had exercised all that reasonable care and diligence that might be expected of a reasonably prudent man under the circumstances, and that the plaintiff, therefore, could not recover.

Labatt on Master and Servant, par. 14, 15; *Thompson on Negligence*, par. 3767, 3774; *Ormond v. Holland*, E. B. & E. 102; *Heaven v. Pender*, 11 Q.B.D. 501, and *Richardson v. Great Eastern Ry.*, 1 C.P.D. 342, followed.

Macneill and B. L. Deacon, for plaintiff; *Dennistoun*, K.C., and *P. C. Locke*, for defendants.

Robson, J.]

[Nov. 10.

IN RE DAUPHIN ELECTION.

Application for recount—Mandamus to County Court judge to proceed—Return to clerk of the Crown in Chancery—Affidavit on application to County Court judge to order recount—Requirements of, under s. 193—Swearing on information and belief not sufficient.

The affidavit required by s. 193 of the Dominion Elections Act, R.S.C. 1906, c. 6, upon receipt of which the County Court