Full Court.] HIGLEY *v.* WINNIPEG. [June 6.

Negligence—Employer and workmen—Defect in ways, works, machinery and plant—Workmen's Compensation for Injuries Act, R.S.M. 1902, c. 178—*Negligence of foreman or person entrusted with duty of seeing that machinery and plant are in proper condition.*

The plaintiff, a carpenter in the defendant's employ under the superintendence of a foreman, was directed to assist in doing some work which necessitated the moving of a plank from one position to another in a frame building. The plank being above his reach when standing on the floor, the plaintiff, without specific directions from, and in the absence of the foreman, took a ladder about six feet long that was nearby, placed it in position, stepped on the lowest rung, held on to the top rung with one hand and with the other tried to raise the plank. In so doing the rung on which he was standing broke under the pressure, and the plaintiff fell upon some machinery underneath and was severely injured. The ladder was the property of the defendants. It was made of cross pieces or cleats nailed to studding but not "checked in," and had been frequently used on defendants' premises by the plaintiff and other workmen. In answer to questions submitted to them, the jury found that the ladder was defective, but they also in effect found that the plaintiff had been negligent in not using some other and safer method of reaching up to and shifting the plank.

Held, PERDUE, J.A., dissenting, that the ladder was a part of the ways, works, machinery and plant, which it was the duty of the foreman to see were in proper condition, that there was evidence to support the jury's finding that the ladder was not properly constructed and that the defect in it had not been remedied owing to the negligence of the foreman, thereby entitling the plaintiff to recover damages under ss. 3(a) and 5(a) of the Workmen's Compensation for Injuries Act, R.S.M. 1902, c. 178, and that the jury's finding as to the plaintiff's negligence would not prevent such recovery.

Held, also, that the damages assessed by the jury ($1,500), being well within the maximum allowed by the statute, were not excessive, and should not be reduced on the contention that the plaintiff had unreasonably neglected to follow the advice of a medical specialist. *Marshall* v. *Orient Steam Navigation Co.*, 79 L.J.K.B. 204, followed.

Per PERDUE, J.A.:—The plaintiff should be nonsuited because he had negligently adopted a dangerous method of reaching the