Province of Ontario.

HIGH COURT OF JUSTICE.

Trial of Action. MacMahon, J.] [Feb. 19.

KELLY *v.* DAVIDSON.

Employer's liability—Master and servant—Negligence—Evidence.

The plaintiff, while working for some contractors who were building a house, was injured through a fall caused by the giving way of part of the scaffolding of the house. The scaffold he was standing on consisted of a single plank about fifteen feet long, one end of which rested on a trestle and the other on a stay formed of a plank nailed to two upright posts forming a part of the main structure. The stay as originally fastened to the posts was perfectly secure, as the plank forming the stay rested on its edge on a cleat securely fastened to the posts by spikes, the stay itself being securely fastened to the posts by large spikes. The general superintendant of the defendants' works had been very explicit in directing the workmen that the stays should be put up and secured as this one had been. Two workmen, however, removed the stay for purposes of their own convenience about three o'clock on September 7, and raised it about a foot above the cleat and nailed it to the posts in a manner which rendered it dangerous. On the following morning, between eight and nine o'clock, the plaintiff and another being directed by the foreman to cut off the ends of two beams at the top of the third storey, the plank referred to was thrown across from the trestle to the stay, and the plaintiff mounting it, the stay gave way and the injury happened.

Held, that there was no evidence of negligence on the part of the foreman, so short a time having elapsed between the removal of the stay and the accident, such removal of the stay, upon which so much trouble had been taken to make it secure, being the last thing a foreman would expect, nor was the fact that after such change was made the plank was up higher at one end than the other sufficient to indicate to him that there had been a change, nor had it caused any comment on the part of the plaintiff who saw the plank placed in position before mounting it.

H. E. Irwin and *Harris*, for plaintiff. *Clute*, Q.C., and *A. R. Clute*, for defendants.

FRASER v. DREW. [Feb. 20.

New trial—Verdict—Finding of jury—Question of fact—Misapprehension.

Where a case has been properly submitted to the jury and their findings upon the facts are such as might be the conclusions of reasonable men, a new trial will not be granted on the ground that the jury misapprehended or misunderstood the evidence, notwithstanding that the trial judge was dissatisfied with the verdict.

Drysdale, Q.C., for appellant. *Harris*, Q.C., for respondent.