

Stephens's negligence, if any, consist?" The answer is: "He should not have allowed his employees to work on or underneath the scaffold when he considered it unsafe." This answer, under the rule laid down in such cases, excludes any finding that Stephens himself had by anything that he had done weakened the scaffold.

The learned trial Judge cited to the jury sec. 6 of the Building Trades Protection Act, R.S.O. 1914 ch. 228. This section has manifestly no relation to any alleged liability of Stephens, whose men were not using the scaffold at the time.

I am of opinion, after a careful perusal of the evidence, that a nonsuit ought to have been entered, and that there is not upon the whole case sufficient evidence to support the finding of the jury against Stephens, even if that would import any legal liability.

I am, therefore, of opinion that the appeal of Stephens should be allowed and the judgment against him set aside with costs, if exacted.

MARCH 1ST, 1915.

*BARRETT v. PHILLIPS.

Division Courts—Appeal—Evidence Taken at Trial—Duty of Judge—Division Courts Act, R.S.O. 1914 ch. 63, sec. 106—New Trial.

Appeal by the plaintiff from the judgment of the 1st Division Court in the County of Hastings, pronounced by the Junior Judge of the County Court of that county, dismissing with costs an action brought to recover \$151.88 upon an acceptance.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

J. P. MacGregor, for the appellant.

Eric N. Armour, for the defendant, respondent.

The judgment of the Court was delivered by RIDDELL, J.:—
This . . . case . . . is one of the class of cases coming under the Division Courts Act, R.S.O. 1914 ch. 63, secs. 62(d) and 106, and the judgment is appealable under sec. 125(a).

Upon the appeal it was stated to us that all the evidence had

*To be reported in the Ontario Law Reports.