(3) Was the plaintiff guilty of any negligence which caused or contributed to the accident? A. No.

The damages were assessed at $4,000.

The duty that a master owes to his servant with regard to the place in which and the appliances with which they are called upon to do their work was considered by this Court in Junor v. International Hotel Co. Limited (1914), 32 O.L.R. 399, 408, 409. See also Halsbury's Laws of England, vol. 20, para. 234, pp. 119, 120; Beven on Negligence, Can. ed., p. 306; Wilson v. Merry (1868), L.R. 1 H.L.Sc. 326, 332; Cole v. De Trafford, [1918] 1 K.B. 352.

From these authorities it is clear that the master is not an insurer of his servant's safety, but is required to exercise only such ordinary care and diligence as may be reasonable in view of the work performed, the danger incident to the employment, and the surrounding conditions and circumstances.

On a careful consideration of the charge to the jury, in the light of these authorities, it appeared that the learned Chief Justice did not sufficiently explain and point out to the jury the exact duty of the master; that he did not deal with the questions raised by para. 4 of the defence—that the silo was constructed and the planking placed thereon by competent workmen and the defendant was not guilty of any neglect or default in respect thereof—in such a way as to draw them adequately to the attention of the jury in order that they might be considered and passed upon by the jury in arriving at a conclusion as to whether the defendant was or was not negligent.

There was no real dispute as to the condition of the premises. The real issues between the parties were: whether or not the defendant had taken reasonable precautions to prevent that condition; and whether or not the defendant was guilty of contributory negligence. The question of contributory negligence was placed before the jury fully and fairly; but the question whether the defendant did all that should be expected from a reasonably careful and prudent employer of labour to avoid the danger or to discover the danger and remedy it, was not fully and adequately placed before the jury.

There should, therefore, be a new trial.

Had counsel for the defendant objected at the trial or requested the Chief Justice to instruct the jury on the questions referred to, this appeal would probably have been unnecessary; and, for that reason, while the appellant succeeded, he should not be awarded the costs of the appeal.

The appeal should be allowed without costs, a new trial should be directed, and costs of the former trial should be costs in the cause.