

Then as to the Workmen's Compensation Act. The jury made no findings, nor were they asked to make any, which would establish a cause of action under the Act, but the learned Judge, on motion for judgment, assumed to make the supplementary findings that the foreman ordered the construction of the scaffold; that he was a person to whose orders and directions plaintiff was bound to conform and did conform; and that it was because of the conforming to such orders that the accident took place. Here again the case falls short of proving negligence on the part of the foreman. He had nothing to do with the direction given by the president as to where the material for the construction of the scaffold was to be obtained, but I do not see how any negligence can be attributed to him because of the order he gave to plaintiff, unless (which was not proved) he had reason to believe that plaintiff was not competent to perform it, and that the order might therefore lead him into danger. The supplementary findings of the learned Judge, assuming, but with all respect not agreeing, that he was, on the evidence, at liberty to make them, therefore carry the case no further. Neither do I think that they are supported by the evidence, because plaintiff, instead of performing the order himself, or overseeing its performance, intrusted its execution entirely to others to whom the foreman had not intrusted it, and he therefore cannot say that he was conforming to the order of the foreman and that his injury resulted from his having so conformed. The foreman may well have been content to intrust the duty to plaintiff himself, an intelligent workman accustomed to the appearance of and to working upon scaffolds, and for whose own use the scaffold in question was designed and constructed, but it would be extending the liability of defendants beyond reason to hold them responsible for the carelessness or ignorance of others upon whom plaintiff chose to devolve the performance of the duty which he had himself undertaken, and which, so far as anything to the contrary is shewn, he might have competently performed had he himself done or supervised it.

It was much pressed . . . that there was negligence by reason of the absence of inspection . . . . This contention is a mere *tabula in naufragio*, and more defective than the others. No case of that kind was made in the pleadings or on the evidence, and a new trial ought not to be granted, on mere suggestion, for the purpose of setting it up.