FEBRUARY 8TH, 1902.

DIVISIONAL COURT.

WILSON v. BOTSFORD-JENKS CO.

Master and Servant—Negligence of Master—Defective Scaffolding—Foreman of Master — Secretary of Master — Knowledge of — Admission of Evidence.

Motion by plaintiff to set aside non-suit entered by FERGUSON, J., at the trial at Owen Sound of an action at common law by servant against master to recover damages for injuries received by the former in the course of his employment, owing to the alleged negligence of the master, and for a new trial, on the ground that there was evidence of negligence to go to the jury. The injury was received in September, 1900. The work was the building of an elevator at Meaford, and the plaintiff was engaged in excavating. The alleged negligence was the unsafe and dangerous condition of a scaffolding upon which the foreman ordered the plaintiff to go, and it was said that the condition existed to the knowledge of one Jenks, the secretary of the defendants, an incorporated foreign company, and that Jenks personally interfered with the work. The trial judge held that there was no evidence to submit to the jury. The plaintiff contended that the whole case should have been left to the jury, the company being bound by the knowledge of Jenks.

W. J. Hatton, Owen Sound, for plaintiff.

W. R. Riddell, K.C., for defendants.

The judgment of the Court (FALCONBRIDGE, C.J., STREET, J.) was delivered by

FALCONBRIDGE, C.J.—It is not shown that Jenks in any way assumed to give orders to the men, or directions as to the practical work which was going on. There was some evidence that he was standing with his hands in his pockets, looking into the excavation on the morning of the accident, and that on former occasions he had been seen to call Danger (the superintendent) to one side, and say something to him which no one overheard. There was no evidence that the persons employed by defendants were not proper and competent persons, or that the materials used were faulty or inadequate: Matthews v. Hamilton Powder Co., 14 A. R. 261; Wigmore v. Jay, 2 Ex. 354; Lovegrove v. London, etc., R. W. Co., 16 C. B. N. S. 669. There was