

The action was tried at Toronto, before MEREDITH, C.J.C.P., who dispensed with the jury except as to damages, which they assessed at \$800.

A. J. Keeler, for the plaintiff.

W. Proudfoot, K.C., and W. H. Grant, for the defendant Richardson.

G. H. Watson, K.C., for the defendant Webb.

MEREDITH, C.J.:— . . . Frederick Leitch was the foreman of the defendant Webb, by whom he was intrusted with the duty of seeing that the gangway was proper. . . . I find, upon the evidence, that he knew that the carpenters had widened the gangway. . . . It is difficult, upon the conflicting testimony, to determine the real position and condition of the gangway at the time the plaintiff met with the accident, but, upon the whole, I have reached the conclusion that there was nothing in its condition to indicate that the use of any part of it, including the addition, would be attended with any danger, nor was there anything to indicate to the plaintiff that the addition was not intended to form part of the gangway and to be used by the defendant Webb's workmen.

The plaintiff testified that he did not know that any addition had been made to the gangway, and I see no reason for doubting his testimony on this point or as to any of the matters as to which he testified.

It was the duty of the defendant Webb not only to provide a safe and sufficient gangway but to see that the gangway provided was maintained in a safe and sufficient condition, and for negligence in that regard he is answerable.

This duty was delegated by him to his foreman, Leitch, who was working at the building, and knew that the addition had been made. It was, I think, his duty, knowing this, to see that the gangway had not been rendered unsafe by what had been done, and, although he passed over it on the evening of the day before the accident, he did not take the trouble to inspect it.

If, as I have found, there was nothing to indicate to the plaintiff that the addition was not intended to be used as a part of the gangway, it was, I think, Leitch's duty to see that it might be safely used in its altered state. This could have been readily ascertained by an inspection of it, and I have no doubt that, if he had made the inspection, the accident would not have happened.

I must, therefore, find that the accident was caused by his negligence in the performance of the duty with which he was intrusted by the defendant Webb, of seeing that the conditions of