The action was tried without a jury at Toronto.
George Bell, K.C., for the plaintiff.
Peter White, K.C., for the defendants.

LATCHFORD, J., in a written judgment, said that default by the company and by the defendant Gray existed at the date on which the plaintiff brought this action, and for such default the company was clearly liable to the plaintiff as "a private person suing on her own behalf with the written consent of the Attorney-General" (sec. 134 (6) of the Act).

A distinction is made in sub-sec. (6) which is of importance in reaching a conclusion as to whether the defendant Gray is also liable to the plaintiff. While a corporation is liable for mere default, the secretary of a corporation is liable for penalties only when he wilfully authorises or permits the default.

It was contended that, as the defendant Gray deposed that he was willing to make the summary for each of the years mentioned, but could not have it verified in either year by his co-directors, he did not wilfully authorise or permit the default. Certain facts were of importance in determining whether effect could be given to this contention.

Upon a review of the facts, the learned Judge had no hesitation in concluding that the defendant Gray wilfully permitted the default.

Reference to Park v. Lawton, [1911] 1 K.B. 588.

Judgment should be entered for the plaintiff against each defendant for $12,760 and costs.

As the order of Middleton, J., 40 O.L.R. 301, so far as, upon terms, it remitted in part the penalties for which the defendants might be held liable, was not complied with, the matter of remission appeared to be still open, and might be spoken to if there was no appeal from this judgment.