

tion under the scheme to carry out which the bondholders had subscribed their money."

Buckmaster, K.C., Martin, K.C., and Geoffrey Lawrence, for the plaintiffs, respondents. Sir R. Finlay, K.C., R. B. Bennett, K.C., J. H. Moss, K.C., and W. Finlay, for the defendants, appellants.

Province of Ontario.

COURT OF APPEAL.

Hodgins, J.A.]

[March 1.

FAIRWEATHER v. CANADIAN GENERAL ELECTRIC CO.

(10 D.L.R. 130.)

Master and servant—Liability of master—Whether employee was within sphere of duties—Safety as to place and appliances—Servant's assumption of risks—Knowledge of defect—Evidence—Weight and efficiency—Negligence imperiling employee.

A foreman in charge of an electric power-house is acting within the sphere of his employment when he himself does or assists in doing necessary work which ordinarily would be done by others under his charge upon whom he had the right to call, unless it is shewn that his authority was limited by his employer to the requisitioning of help in such cases.

Barnes v. Nummery Colliery Co., [1912] A.C. 44, and *Whitehead v. Reader*, [1901] 2 K.B. 48, referred to.

It is the duty of the employer to provide proper appliances for the employees and to maintain them in a proper condition and so to carry on his operations as not to subject those employed by him to unnecessary risk.

Smith v. Baker, [1891] A.C. 325, applied; *Schwab v. Michigan Central R. Co.*, 9 O.L.R. 86, and *Can. Woollen Mills v. Traplin*, 35 Can. S.C.R. 424, referred to.

Neither the employee's knowledge of a defect in the condition of the works due to the employer's negligence, nor the continuance in the employment, is conclusive evidence of willingness on the part of the employee to incur the risk.