

Mr. Armour contended that the defendants were not liable even if the foreman had been guilty of negligence in omitting to caution, and relied upon the recent case of *Cribb v. Ky-noch (Ltd.)*, [1907] 2 K. B. 548, where it was held that the doctrine of common employment applied, and that, although there was a duty on an employer to give instructions to a young and inexperienced person employed by him in dangerous work, that duty was one that could be delegated to a foreman, and that the negligence of the foreman was a risk which a fellow-servant, even though an infant, takes upon himself. The report of this case states that the action was based solely upon the common law liability, and so I presume there was some reason why the plaintiff was not able to invoke the assistance of the Employers' Liability Act.

The plaintiff here is entitled to rely upon the provisions of R. S. O. 1897 ch. 160, sec. 3, which provides for personal injuries caused by the negligence of any person in the service of the employer "who has any superintendence" intrusted to him, whilst exercising such superintendence, and in such cases the statute has swept away the defence of common employment. So here the foreman Pope was in the service of the defendants, and was intrusted with the superintendence of hiring men to work on this floor, and while he was so exercising such superintendence he was guilty of an omission of duty towards the plaintiff, which I think was plainly negligence. I do not read the *Cribb* case as in any way cutting down or limiting the provisions of the Employers' Liability Act, and, therefore, I do not regard it as assisting in the solution of any case here based upon the provisions of our Workmen's Compensation for Injuries Act.

I think the plaintiff's case can also be based upon sub-sec. 3 of sec. 3 of the Act, and, if desired, the pleadings may be so amended. The plaintiff was bound to conform to the directions of Pope, and at the time of the injury he was so conforming, nameiy, helping Hill, and the injury resulted from his having so conformed. I think it was negligence in the foreman in so directing the plaintiff to assist at the working of a dangerous machine, without himself giving some instructions, or warning, or seeing that the operator of the machine did.

I do not think that the plaintiff has any redress under the provisions of the Factories Act, as it does not appear that