

Falconbridge, C. J., Street, J.]

[Feb. 8.

WILSON v. BOTSFORD-JENKS CO.

*Master and servant—Injury to servant—Defective condition of appliances—
Knowledge of master—Company—Officer of—Admissions by—
Evidence—Onus—Nonsuit.*

The plaintiff was in the employment of the defendants as a labourer assisting in the erection of an elevator. He stated that he was directed by D., a superintendent of the work, to go upon a planking which answered the purpose of a scaffolding in an excavation made for the purpose of placing therein the leg of the elevator. The planking gave way while the plaintiff was on it, and he was precipitated to the bottom of the excavation, sustaining injuries. He alleged that the scaffolding was defectively constructed, unsafe, and unfit for the purpose for which it was intended, to the knowledge of the defendants. It was not argued that the defendants were liable to the plaintiff for D.'s negligence, if any; but it was contended that the defendants had knowledge of the defective construction and unsafe condition of the scaffolding through J., their secretary-treasurer. It was not shewn that J. assumed to give orders to the men, or directions as to the practical work which was going on; but there was evidence that he was standing, with his hands in his pockets, looking down into the excavation, on the morning of the accident, and that on former occasions he had been seen to call D. on one side and say something to him, which no one overheard. There was no evidence that the persons employed by the defendants were not proper and competent persons, or that the materials used were faulty or inadequate; nor was there any evidence that the defendants had any better means of knowing of the danger than the plaintiff.

Held, that the onus was on the plaintiff, and he had not made out a case to be submitted to the jury. *Matthews v. Hamilton Powder Co.*, 14 A.R. 261; *Wigmore v. Jay*, 5 Ex. 354; *Lovegrove v. London, etc., R.W. Co.*, 10 C.B.N.S. 669, and *Allan v. New Gas Co.*, 1 Ex.D. 251, referred to.

Evidence was given of an admission made by J. to the plaintiff after the accident, as to the defective condition of the scaffolding and the defendants' knowledge of it.

Held, that he had no authority to make admissions on behalf of the defendants, an incorporated company. *Bruff v. Great Northern R.W. Co.*, 1 F. & F., 344; *Great Western R.W. Co. v. Willis*, 18 C.B.N.S. 748; *Barnet v. South London Tramways Co.*, 18 Q.B.D. 815; *John v. Lindsay*, 53 J.P. 599, and *Newlands v. National Employers' Accident Association*, 53 L.T.N.S. 242, referred to.

Hutton, for plaintiff. *Riddell*, K.C., for defendants.