

the direction contained in the last sentence; and the jury have in effect found that the manner of nailing the board was negligent, and there was "a defect in the condition . . . of the plant . . . used in the business of the employer" in that respect.

Markle v. Donaldson (1904), 7 O.L.R. 376, 8 O.L.R. 682, as I understand it, decides that any person who is directed by the employer to get ready for workmen an appliance necessary for their safety, is a "person intrusted by him with the duty of seeing that the condition . . . of the plant . . . is proper," under sec. 6 (1) of the Act. No sound distinction can be drawn between that case and this. In each case the board or cleat was to have weight put upon it in the work of the plaintiff, and it would be dangerous unless properly nailed. The jury having found that the board was negligently nailed, it was not at all necessary to find who was the negligent person: Markle v. Donaldson. The action then lies in Ontario.

The quantum of damages is attacked. The Quebec Act of 9 Edw. VII. ch. 66 provides, by sec. 2, for compensation to be paid: (a) in case of absolute and permanent incapacity; (b) in case of permanent and partial incapacity; and (c) in case of temporary incapacity. The injury in question could only come under (b) or (c), and the compensation awarded thereunder would be much less than \$1,500. Section 14 provides that "the person injured . . . shall continue to have, in addition to the recourse given by this Act, the right to claim compensation under the common law from the person responsible for the accident other than the employer, his servants or agents . . ." and (sec. 15) "the employer shall be liable to the person injured . . . for injuries resulting from accidents caused by or in the course of the work of such person, in the cases to which the Act applies, only for the compensation prescribed by this Act." It follows that in Quebec no damages could be recovered in excess of the amount of compensation given by the Act; and no action could be brought against the employer under the common law.

Were the matter *res integra*, it might not unreasonably be held that the plaintiff, by suing in another jurisdiction, cannot put himself in a better position than if he had sued in the country *delicti commissi*.

Speaking for myself, I should have hesitated to hold that a man injured in Quebec could put himself in better position by coming to Ontario, and suing in our Courts, than if he had sued