

here in a Court of Appeal, able to say that the verdict is one which reasonable men might not fairly, under the evidence, have found."

If I could find any evidence, whatever, of negligence in this case, any evidence upon which a jury as reasonable men could have found negligence against the defendants, I would not think of disturbing this verdict even though the general scope of the evidence was largely the other way. But after a careful perusal of the evidence I am unable to find any act or omission on the part of the defendants which was negligent in any reasonable definition of the word. The plaintiff was instructed, before he comenced work on the face of the quarry, to get out when the machine began to work. He was warned before the machine actually began to work, though he denies this. If it is answered that the jury had a right to believe him on this against his fellow-workman, and all the other witnesses, still he does not pretend to deny that he heard the warning just as the machine began to work. There was ample time to have gone ten times the distance to safety in the sixty seconds intervening between the warning and the occurrence of the accident. What pray, was defendants' negligence? What more could they, as reasonable men, have done? They gave warning after warning. The noise of the machine itself, which plaintiff admits he heard, gave him a whole minute's warning. What did defendant do that was negligent? What omit? The answer of the jury to this question will not stand for a moment. And while the law will allow the finding to stand upon any other reasonable theory disclosed by the evidence I can find no act done or omitted in the whole evidence upon which a finding of negligence can be based.

While I think a strong case of negligence has been made out against the plaintiff and the jury had no substantial ground for their finding on this point, it is not necessary for me to deal with this.

I think no negligence has been proved against defendant, and the verdict, therefore, cannot stand.

The appeal will be allowed, and a new trial granted with costs.