

McNALLY v. HALTON BRICK CO.—KELLY, J.—JAN. 8.

*Master and Servant—Injury to and Death of Servant—Defective Condition of Plant of Brick-works—Negligence—Common Law Liability—Knowledge of Superintendent—Omission of Precaution—Liability under Workmen's Compensation for Injuries Act—Findings of Jury—Damages.*—Action by the widow and administratrix of the estate of Louis McNally, deceased, for damages for his death, he having been killed on the 27th June, 1913, while working for the defendants in their brick-works. He was engaged in wheeling brick into kiln No. 4, where the bricks were being built up or set by two setters preparatory to the process of burning. When all the floor space of the kiln had been built upon, except about 8 feet square just inside the door, a large quantity of the bricks so built fell over upon McNally and another man who was engaged with him in wheeling, and McNally was killed. The action was tried with a jury. At the close of the plaintiff's case the defendants moved for a nonsuit, but the Judge ruled that there was evidence to go to the jury, and the case was submitted to the jury on the question of the defendants' liability. The jury's findings on the whole evidence were, that McNally met his death through negligence on the part of the defendants in that the floor was not kept in proper repair by them, and was not in a proper condition at the time of the accident; and that there was an act of omission on the part of the defendants' officials in not ordering the props to be left in position. They also found that there was no contributory negligence on the part of the deceased, and that he may have had a knowledge of danger, but not an appreciation or apprehension of the risk he ran. The learned Judge reserved judgment upon the whole case, and now gave written reasons for his conclusions. He referred to Halsbury's Laws of England, vol. 20, p. 129, sec. 252; *Wilson v. Merry*, L.R. 1 H.L. Sc. 326, 332; *Smith v. Baker & Son*, [1891] A.C. 325, 362; and said that failure to maintain proper plant and equipment was a breach of the master's duty at common law. Kennedy was the defendants' managing director; and, according to his own evidence, he acted as superintendent. Kennedy's only experience with brick kilns was what he acquired with the defendants, and he admitted that he knew of the condition of the floor and that there was danger. The negligence found by the jury of the defendants not keeping the floor in repair and of its improper condition at the time of the accident was negligence which, in view of the evidence upon