

advantageously be done. The defendant had sent, with another carpenter, one George Hope to do some work in the second storey of the building. His work was to take the sash out and set the window by putting weights on. He reached the second storey by means of an elevator. The floor was being laid, but not wholly completed, from the elevator to the window, in reference to which he was to do the work, and, in order to reach that window, Hope placed boards or planks, as they are called, across the girders, forming a passageway. He walked safely over this passageway to his destination.

Because of the rain, the deceased decided to go to the second storey and to do from the window some outside painting of the building. The deceased ascended by the elevator, and attempted to walk upon the passageway which Hope had provided, and as Hope had done; but one of the boards broke, and, because of it, the deceased fell to the floor below and was killed. . . .

At the trial I left the following questions to the jury, which were answered as follows:—

“(1) Was the plank or board which broke when the deceased walked upon it, and caused the death of the deceased, weak and defective, and entirely insufficient for the purpose? A. Yes.

“(2) Was the workman Hope guilty of negligence in using that plank or board for the purpose for which it was used? A. Yes, but not intentionally.

“(3) Was it, or ought it to have been, within the reasonable contemplation of the workman Hope that painters or others having work to do in or about the building would or might be in the second storey, and would or might use the passageway made by the plank or boards placed on the girders by Hope? A. Yes.

“(4) Was the deceased rightfully in the second storey of the building and rightfully from the inside of the building doing the painting on the outside of the window or frames? A. Yes.

“(5) What damages do you find should be paid by the defendant to the plaintiff, the widow, and her children, in case the defendant is liable? If you like you can apportion the amount between the widow and children. A. We have assessed the damages at \$1,000, to be apportioned by your Lordship.”

I agree with the findings of the jury as to all these answers except that to the third question. The defendant personally did nothing. Hope did not know, nor did he have any reason to know, that the painter or any one but the carpenters would be upon the second storey. The deceased did not need to go upon the second storey to do his work. It was expected that he would