

LANG V. JOHN MANN BRICK CO. LIMITED—KELLY, J.—JAN. 12.

*Master and Servant—Injury to and Death of Servant—Superintendent of Factory—Negligence—Defective System—Evidence—Workmen's Compensation for Injuries Act—Findings of Jury—Nonsuit.*—William Frederick Lang was in the employment of the defendants at their brick manufacturing plant, and on the 1st April, 1913, met his death in a large hopper, in which sand and lime were placed, and from the bottom of which these materials passed to the machine by which the bricks were made. On the outside of the hopper was a ladder leading up to a platform near its top, around which was a railing. Inside the hopper was a ladder, leading downwards from its top. The sand and lime in the hopper had a tendency to clog which necessitated at times some operation to start again the flow towards the opening at the bottom. On the afternoon of the day of the accident, Lang was found dead in the lower part of the hopper, the sand and lime having run in upon him and smothered him. The plaintiff, the administratrix of the deceased's estate, brought this action alleging negligence on the part of the defendants which caused the death. Substantially the evidence for the plaintiffs was that the deceased, who was a machinist, was in the defendants' employment about two years; at the time of his death he was superintendent of the factory, and had charge of the men and the plant, his duties being to run the plant and see that the bricks were turned out, and to do repairs; he was manager on the repairs; alterations had been made to the hopper previously, by Morrison, the deceased's brother-in-law, under the deceased's direction; an iron rod was provided for use by persons standing on the platform, outside and near the top of the hopper, in starting the sand and lime running at times when they became clogged or inert; a muzzle to go over the nose and mouth was kept in the office, under charge of the deceased, for the use of those having occasion to enter the hopper, which would have protected him had he used it. It was stated by one of the plaintiff's witnesses that it was possible to have put a guard on the ladder, but that he did not think it could be placed far enough down to be of any use. Another witness said that there was no necessity for the deceased's entering the hopper; that the sand was running all right that afternoon; and that the sand and lime were not clogged and did not stop. Some of the witnesses called for the plaintiff thought that the iron bar could not be satisfactorily