

dangerous condition, collapsed, falling upon the deceased Simberg, causing him injuries from which he died.

It is alleged that the defendant John Gosnell was the owner of the property, and so was liable for the result of this accident.

The negligence charged is that of leaving the wall in a dangerous condition and not having it shored up or properly stayed or strengthened while the work of demolition was progressing.

At the trial, the action was abandoned as against Gosnell, counsel for the plaintiff consenting to judgment going in Gosnell's favour.

At the close of the case, a motion was made by counsel for the other defendants respectively that the action be dismissed against them.

My decision was reserved, and questions, subject to my ruling upon the motion, were submitted to the jury. These questions with the answers thereto were:—

1. Were the defendants or either of them guilty of negligence which caused the death of Jacob Simberg? If one defendant only guilty of negligence, which one? A. Yes.

2. If so, what was that negligence? A. By leaving this wall in a dangerous condition.

3. Was the deceased Simberg in the place and doing the work assigned to him by Wallberg at the time of the accident? A. No.

4. Could the deceased Simberg, by the exercise of reasonable care, have avoided the accident? A. No.

The action is brought against Wallberg under the Workmen's Compensation for Injuries Act; and, as the answer to the third question is that the deceased was not at the place and doing the work assigned to him when the accident happened, the plaintiff cannot recover against the defendant Wallberg.

There was not, in my opinion, any evidence of negligence on the part of Lowes. There was no duty owed by him to any person unless upon the premises as of right either as owner or tenant or licensee, or in some other way. There was no invitation on the part of Lowes, either express or implied, to any one, apart from his contract with Wallberg, to go near this wall so as to be in danger of its falling. This is not the case of a trap or of any danger to which a person not aware of it might be lured or attracted. Lowes, in good faith, gave the work to an independent contractor, Wallberg, a competent man skilled in that kind of wrecking business.