

and that is also Mr. Kirkgarde's opinion, and Cowell said he thought Pressick made an error of judgment in placing the machine." . . . "Then, having set up the machine in that way, was he negligent in not standing on the safe side, but instead of that, going on the side next the opening and pulling the wrench there. It is said that had he been using the wrench—suggested rather—he would have carried it with him when he went. Well, perhaps he would, and perhaps he would not. He might have dropped it and reached for something else, as he went down the glory hole and lost his life. I ask you to find in what did his negligence consist, if you find he was negligent. If there is any other ground of negligence on his part I want you to mention it."

It is plain that both the alleged grounds of negligence were brought before the jury and only these two were suggested. With very great respect, I must differ from the learned Judge when he says: "The machine might have been more safely placed for the loosing of the nut if the valve had not been on the side on which it was at the time of the accident. This was the contributory negligence which the defendants sought to prove Pressick guilty of."

There was the other, viz., standing in a wrong and dangerous position, with the machine set up as it was.

And I think it cannot be fairly said that the jury have negatived either one or the other negligence; and particularly not the negligence of standing in the wrong place.

The finding of a jury must receive a reasonable construction, and one in view of all the circumstances of the case. A finding of contributory negligence is entitled to as much respect as a finding of negligence on the part of the defendants, and that always receives a liberal interpretation. Where this finding in favour of a workman, with particulars of negligence as in the eighth answer, the Court would strive and rightly strive, to support—and in my view would succeed in supporting—the finding of negligence; and the defendants have the same rights as a workman when before the Court, to a reasonable view being taken of the whole matter; if the findings of negligence in their favour can be fairly supported, it should be.

The answer to the 8th question can mean the deceased should have stood in a different position—that is what I