

The duty alleged by the plaintiff throughout was to ventilate the building in which he worked in such a manner as to keep the air reasonably pure so as to render harmless, so far as reasonably practicable, vapours generated in the course of the work done there; the breach alleged was a neglect of such duty; and the consequence the emission of strong, irritating, and poisonous gases, which, owing to the absence of such ventilation, permanently injured the plaintiff's health. The gases or fumes were alleged to have arisen from small tanks into which hot metal, in the process of manufacture into ammunition shells, was dipped in a solution of prussic acid and a solution of sulphuric acid.

In order to succeed in the action, it was, therefore, necessary for the plaintiff to prove that these vapours or fumes did arise from the tanks; that, so arising, they were injurious to health; that the defendants were guilty of a breach of duty to ventilate the building; and that the plaintiff's health was injured, and to what extent, by such vapours, by reason of such absence of ventilation.

The jury found: that harmful gases were so generated, "the three fumes of gases combined sulphuric acid, cyanide of potassium, and natural gas;" that the building was not ventilated in such a manner as to keep the air reasonably pure and so as to render harmless, so far as reasonably practicable, all gases, vapours, or other impurities generated in the course of the manufacturing process carried on by the defendants while the plaintiff was in their employment; that the condition of the factory where the plaintiff worked caused his present and possibly future disability; that the injury complained of by the plaintiff was caused by the defendants' negligence; that the negligence was, "Sufficient ventilation was not provided while the plaintiff worked there;" and that the plaintiff was not guilty of contributory negligence; and they assessed the damages at \$3,500 under the common law and at \$3,664 under the Factories Act.

Judgment was properly directed to be entered for the lesser sum; and to that the plaintiff did not now object.

The plaintiff's claim was brought before the Workmen's Compensation Board: the Board rejected the claim on the ground that, if it could be supported in fact, it would not be a case of "a personal injury by accident," and so it could not be one within the Act; and, whether that conclusion was right or wrong, it was made final and conclusive by sec. 15 (2) of the Workmen's Compensation Act, 4 Geo. V. ch. 25, as enacted by sec. 8 of the Act to amend the Workmen's Compensation Act, 5 Geo. V. ch. 24. Therefore the Act did not stand in the way of this action.

The only ground upon which this appeal could be allowed was, that there was no evidence upon which reasonable men could find