

of the shaft, when he was struck by a falling brick, and from the injuries received died.

The negligence charged was that the defendants "did not provide a proper, safe and efficient system of carrying on their work," and that the place where the deceased was working should have been protected. There was also a charge of negligence of the superintendent and lack of inspection. These latter charges were not material, having regard to the findings of the jury.

The questions submitted to the jury and their answers were as follows:—

1. Was there any defect in the appliances of the defendants which caused or assisted in causing the casualty?

2. If so, what was it? Answer fully.

3. Was the deceased warned to keep his head from below the shaft? (a) By the foreman? Yes. (b) By Bissett? Yes.

4. Did he know that it was dangerous to put his head below the shaft? A. Yes.

5. Was he killed by reason of his putting his head below the shaft? A. Yes.

6. Was he in his proper place when he was killed? A. No.

7. If he had been in his proper place would he have been killed? A. No.

8. Damages? A. \$2,150. To the widow \$1,000; to Maria (8½ years), \$500; to Elmo (5 years) \$500; to Administrator \$150, doctor's bill.

We consider that if the shaft had been continued upwards another 6 inches this accident would not have happened, but we cannot agree whether the absence of this is or is not a defect, nor can 10 of us agree as to this.

W. R. R. J."

The appeal to Divisional Court was heard by HON. MR. JUSTICE CLUTE, HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE LENNOX.

A Lewis and Telford, for plaintiffs, appellant.

John Nesbitt, K.C., for defendant, respondent.

HON. MR. JUSTICE CLUTE:—Even assuming that the answers to the two first questions were favourable to the plain-