

not working right, and that he, Mr. Gallagher, was there on several occasions trying to locate defects; and the defendant, as manager of a well-conducted hotel, should have known what a man was in the kitchen for.

Q. 3. Did the defendant provide a safe place for the plaintiff to work in? A. No.

Q. 4. If not, in what did the unsafeness consist? A. In an improperly constructed kitchen furnishing.

Q. 5. Did the explosion occur by reason of any defect in the defendant's hot water plant? A. Yes.

Q. 6. If so, what was the defect? A. Lack of air and insufficient radiation.

Q. 7. Was the defendant aware of the defect prior to the explosion? A. The answer to No. 2 should answer No. 7.

The Junor action was based solely on common law liability; but in this action, although no specific claim is made in the pleadings under the Workmen's Compensation for Injuries Act, the respondent is, we think, entitled, if she can, to maintain her claim both under the Act and at common law.

For the reasons given in the Junor case, I am of opinion that there is no common law liability; and I am also of opinion that, in the absence of a finding that the defect in the hot water plant which the jury found to exist, arose from or had not been discovered owing to the negligence of the appellant or of some person entrusted by it with the duty of seeing that the condition or arrangement of the plant was proper (R.S.O. 1897 ch. 160, sec. 6 (a)), judgment could not properly be entered for the respondent.

The proper course is, I think, for the Court to exercise the power conferred upon it by the Judicature Act, R.S.O. 1914 ch. 56, sec. 27(2), and to make the proper finding on the evidence, which is, I think, that what is required by the provision of the Act to which I have referred, was not proved. The view of the jury apparently was, that, because Gallagher, according to his testimony, was in the kitchen examining the work he had done, on some occasions after it was completed, and that, as the jury thought, his object in being there was to try to locate the defect, knowledge of the defect was to be imputed to the manager, Pollock, because Pollock, "as manager of a well-conducted hotel, should know what a man was in the kitchen for." It requires no argument to prove that this conclusion is not warranted by the premises on which it is based.

The third question put to the jury was not the proper ques-