

the elevator, and was in the act of closing the door, and was caught between the floor of the building and the upper part of the elevator cage, and received injuries from which he died. In an action by plaintiff personally and as administrator of deceased claiming damages the jury awarded plaintiff "for loss of deceased's services since death \$1,500."

*Held*, that this part of the verdict could not be sustained without overruling the common law rule that in a civil court the death of a human being cannot be complained of.

On the trial evidence was offered of the proceedings in a judgment dismissing a former action brought by plaintiff as administrator suing for and on behalf of himself as father, and the mother of the deceased, under the Act corresponding to Lord Campbell's Act, in respect to the same alleged negligence.

*Held*, that the evidence was improperly rejected, and that for this reason also this part of the verdict could not stand.

The jury, in addition to the damages above mentioned, awarded "for damages to deceased's estate from the happening of the accident to death, and for necessary expenses \$37.50."

*Held*, that there being no contract for safe carriage, and the case being simply one of tort for alleged negligence, the action died with deceased.

*Held*, also, that there was evidence of negligence on the part of deceased, in attempting to leave the elevator at the time he did, which contributed to the happening of the accident, and which should have been submitted to the jury.

The learned trial judge, in summing up, said to the jury: "I cannot understand, myself, how the negligence of the deceased contributed to this accident."

*Held*, that this was equivalent to telling them that there was no evidence of the fact, and was misdirection.

*Held*, also, that the direction to the jury, that if they found that deceased pushed open the closed door to get out they might find that there was contributory negligence, was calculated to hinder the jury from considering any evidence which they, themselves, might be able to discover tending to shew that there was contributory negligence.

*D. McNeil and W. F. O'Connor*, for plaintiff. *R. E. Harris, K.C.*, and *W. E. Thomson*, for defendant.

Full Court.]

FLYNN v. KEEFE.

[March 8.

*Negligence—Action against contractor—Damages for personal injury and shock—Not severable—Remedy where insufficient damages awarded.*

Defendant, a contractor, engaged in the construction of a building in the city of H. obtained permission to enclose a part of the street with a fence during the progress of the work. A portion of the fence was made movable, so as to permit the passage of teams, etc. During the day time it was defendant's custom to move this portion of the fence to one side and