

It does not appear that there was not time to have fully warned the men after the fire was discovered, and if they were not warned this would be owing to the neglect of Handy, the watchman. Now, he was a person in common employment with deceased, and the statute does not avail in this case to enable plaintiff to escape from the defence raised by common employment. This, I think, is clear. The statute does not give a workman remedy against his employer for the negligence of a fellow servant, except in the cases therein specified: *Wakeley v. Holloway*, 62 L. T. N. S. 639; *Wild v. Waygood*, [1892] 1 Q. B. 783; *McEvoy v. Waterford Steamboat Co.*, 18 L. R. Ir. 159.

The Employers Liability Act (England), of which our Workmen's Compensation for Injuries Act is a copy, was introduced to bring back the law to what it was supposed to be in England before . . . *Priestley v. Fowler*, 3 M. & W. 1, and the effect of the statute is stated by *Smith, J.*, in *Weblin v. Ballard*, 17 Q. B. D. 125; . . . *Thomas v. Quartermaine*, 18 Q. B. D. 685.

Now, a workman is *prima facie* entitled to recover where the employer—be he private employer or corporation—has delegated his duty of superintendence to other persons, and such other persons have caused injury to the workman by negligently performing the duties and powers delegated to them, but the doctrine of common employment, so far as it is not abrogated, remains.

There was no evidence that Handy, who had formerly been a fireman, was not a proper person for the watch, or that there was negligence on the part of the superintendent or general manager in appointing him. If it can be said that there was negligence on the part of any one which caused the death of plaintiff's husband, it was that of the watchman, a person in common employment with deceased, and on account of whose negligence plaintiff is not entitled to recover.

I agree with the trial Judge "that there is no evidence upon which a jury of reasonable men could be asked to find that such failure was the cause of the death of plaintiff's husband. Upon the evidence it is purely conjectural what caused his death, and upon the whole case I can find nothing which would warrant a jury in finding that it was caused by the want of an additional watchman or would have been prevented had such watchman been provided."

Appeal dismissed with costs.