

Full Court.]

GRANT v. ACADIA COAL CO.

[April 13.]

*Coal mine—Explosion of gas causing death of workman—Failure to fence off or inspect unused place—Negligence of fellow-workman—Mines Regulation Act R.S. (5th series) c. 8, s. 25.*

The Mines Regulation Act R.S. (5th series) contains the following among other provisions :

(1) That in every mine worked for coal once in twenty four hours, within five hours before commencing work, a competent person shall inspect that part of the mine worked and the roadways leading thereto and shall make a true report as to the condition of ventilation, and no workman shall be allowed to go to work until the same are stated to be safe.

(2) That all entrances to any place in a mine not in actual course of working and extension shall be properly fenced so as to prevent persons inadvertently entering the same.

A balance in defendant's mine which had not been in actual course of working or extension for a period of six months was left unfenced during that time, and was inspected only at intervals for the purpose of seeing that no roof fell on the stock or on the roadway. The deceased was sent into the balance for the purpose of removing some stock which had been left there when work was stopped, and was killed by an explosion which ensued. Deceased was sent in by orders of the overman, who, prior to giving deceased his instructions, asked the underground manager if the place would be all right, and was told that there would be nothing in there, meaning that the place would be free from explosive gas.

*Held*, that the accident was due to the negligence of a fellow workman and that the trial judge was right in withdrawing the case from the jury.

Per TOWNSHEND, J.—Where the mine owners have placed in the hands of their officials the statutory regulations with directions to follow them, they cannot be made responsible for the neglect and disobedience of the officials whom they are required by the statute to place in charge; especially in the absence of evidence of knowledge of such neglect on the part of the company or its directors.

*Held*, also that the violation of the regulations shewn did not amount to evidence of a "defective system."

Per GRAHAM, E.J., dissenting. There was a case for the jury.

H. Mellish, for appellant. W. H. Fulton, for respondent.

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COGSWELL v. GRANT.

[April 13.]

*Mortgagor and mortgagee—Foreclosure and action on bond—Plea of statute of limitations—Evidence to take case out of.—R.S. (5th series) c. 112, s. 21.*

A mortgage and bond given by G. to C. to secure the repayment of a sum of money were dated January 7th, 1877. The last payment of interest