was very dense, although the fire itself was not otherwise of a serious nature.

Negligence was charged by the statement of claim in not providing and maintaining proper supervision of the work, in leaving timber or paper exposed, in permitting the improper use of fire, and otherwise conducting the work in a negligent manner, negligence in the person having superintendence, absence of proper appliances to put out fires, and insufficient modes of egress from the shaft in which the fire occurred.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, JJ.A.

J. H. Coburn, for the plaintiff. *J. H. Rodd* and *E. C. Kenning*, for the defendants.

GARROW, J.A. (after setting out the facts as above):—It is perfectly plain . . . that in doing as he did the unfortunate deceased was acting not at all as the servant of the defendants, or under any orders or commands, directly or indirectly, from them, but solely as a volunteer. And it is also equally beyond question that in venturing into the shaft for the second time as he did, he did so with a full comprehension of the danger of so doing, and, indeed, after a warning not to do so from Mr. Wheeler, who was acting as the defendants' first aid physician. In such circumstances, and in view of the reservation made by consent at the trial that the court might deal with the issue of contributory negligence upon the evidence, the case for the plaintiff, notwithstanding the above and earnest argument of Mr. Coburn, seems upon both grounds absolutely hopeless.

Appeal dismissed.

MEREDITH, J.A., agreed in the result, for reasons stated in writing.

OSLER, J.A., agreed, for reasons to be stated.

MOSS, C.J.O., and MACLAREN, J.A., also concurred.

HIGH COURT OF JUSTICE.

Master in Chambers.] [Jan. 15.

GREAT WEST LIFE ASSURANCE CO. *v.* SHIELDS.

Summary judgment—Affidavit in support of motion.

Motion by the plaintiffs for summary judgment under Rule 603 in an action on a judgment recovered in Manitoba. The Master held that the affidavit in support of the motion, being