

where the pavement was being repaired. The melted pitch was dipped out of the cauldron into pails by means of an iron ladle with a piece of pine board nailed on to it to form a handle.

In the course of the work the pitch would adhere to the ladle, and it was found necessary from time to time to clean it off. The course pursued by the workman, under instructions from his employers, was to thrust the ladle into the fire at the base of the furnace so as to burn off the accumulations. This resulted in the wooden handle catching fire from time to time, being partly consumed, and gradually weakened.

On the 19th April, 1910, the workmen "had put out the second batch of pitch for the day." One man was cutting up more barrels of pitch for the next batch, and the man in charge of the ladle was cleaning it in the manner indicated. He saw its contents burning and drew or jerked the ladle out of the fire, whereupon the handle and ladle separated, the workman stepped aside to avoid injury to himself, the ladle was rolled over a pile of sand kept on hand to dump the pitch on when cleaning it, and its melted and blazing contents thrown in the air. Some of these fell upon the face and clothing of the plaintiff Reginald Waller, a boy of about six years of age, who was a few feet in the rear of the workman, and injured him somewhat severely.

His father brings this action on his own account for expenses incurred by him, and also as next friend for his son for damages in consequence of the injuries sustained by him.

The defendants plead that the injuries were not caused by them or their servants; that no notice in writing of the accident was given, as required by the statute in that behalf; that neither the defendants nor their servants were guilty of any negligence; and that the accident occurred in consequence of the negligence of the plaintiff Reginald Waller in going where he was injured after being ordered and directed to keep away from the work being done. . . .

There was, I think, ample evidence to warrant the findings of the trial Judge.

There was a statutory duty on the part of the defendants to keep the street in repair. The defendants themselves could have undertaken the work of repairing the pavement in question, and, if so, would have been under the obligation of taking such precautions in doing it as not to expose the public to danger of injury. The work of heating the pitch and handling it when heated was necessarily dangerous and required care and precaution. Under such circumstances, a duty was cast upon the