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HON. MR. JUSTICE MIDDLETON.

APRIL 4TH, 1914.

MARTIN v. PERE MARQUETTE R.W. CO.

6 O. W. N. 164.

Negligence—Fatal Accidents Act — Master and Servant—Death of Foreman of Coal Sheds — Contributory Negligence—Pouring Gasoline Near Lighted Lantern—Findings of Jury—Defective Appliances—Deceased Author of Accident—Damages Inadequate—Improper Attitude of Jury—Dismissal of Action.

MIDDLETON, J., *held*, that a workman who attempted to pour gasoline from a can into a beer bottle through a funnel within two or three feet of a lighted lantern, thereby causing an explosion, was the author of his own misfortune, and that the findings of the jury that defendants were negligent in not supplying proper appliances must be disregarded.

Action under the Fatal Accidents Act to recover damages for the death of Alexander Martin by reason, as was alleged by the plaintiff, of the negligence of the defendant, by whom the deceased was employed.

The action was tried with a jury at Sandwich, 24th March, 1914.

G. H. Rodd, for the plaintiff.

R. L. Brackin, for the defendant.

HON. MR. JUSTICE MIDDLETON:—The deceased Alexander Martin was foreman of the coalsheds of the defendant company at Blenheim. These sheds were established for the purpose of coaling locomotives. The coal was hoisted into bins at a considerable height from the ground by means of a gas engine. When a locomotive came, and coal was needed, the coal was dropped into the tender through a chute.

A coal shed was destroyed by fire on the 7th November, 1913, and Martin was so badly burned that he died the next