

upon another, whether an independent contractor, a superior servant, or a fellow-servant of the servant who is killed or injured by his failure to perform it. In this sense it is frequently called a non-assignable or unalienable duty. The most obvious conception of law, justice, and humanity, would assign to this class of duties, the duty which a master owes to his servants of keeping his premises provided with reasonable means of exit in case of fire; of providing reasonably efficient apparatus for the extinguishment of fire; and of keeping such apparatus in a reasonable state of repair. All these obligations on the part of the master are repudiated by the decision in question, and the risk is put upon the injured or murdered servant, and the failure of the master to perform this primary duty is put upon the shoulders of a fellow-servant, and the infamous conclusion reached that the catastrophe presumptively is due to the failure of some fellow-servant to do his duty, and that the master is therefore not liable.

In this case it appeared that the plaintiff and other employees worked on the upper floor of a six-story factory building. There was no fire escape above the fifth floor, nor any exit from the sixth floor except by a winding stairway in a tower at the corner of the building. The fire occurred through the overheating of a spindle of a spinning-mule. The fire apparatus was out of order. Ignoring the obvious conclusion that it was a primary duty of the master to keep the fire apparatus in order, the court assumed, in the absence of evidence speaking upon the question, that it was out of order in consequence of the negligence of a fellow-servant of the plaintiff. It was a cold and brutal assumption, indulged in for the purpose of putting money and property above life and humanity. This has been called 'The Moloch decision.' It is not creditable to the head or to the heart of the court that rendered it, or to the judge who consented to be its mouthpiece. It is opposed to the settled principles of the common law. No reasoning could properly result in the conclusion that the failure to perform a duty primarily resting upon the master, that of taking reasonable measures to render his premises safe for his servants, could be shuffled off as the duty of some fellow-servant. This dreadful holocaust, in which a great many people, some of them women and children, were burned to death, and this miserable decision, exonerating the proprietors of the building where their negligence was absolutely plain, recall to mind that passage of Milton in which he describes: