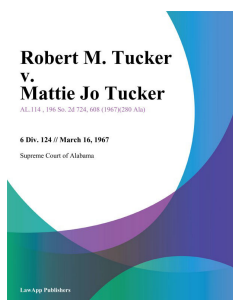


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JAMES DURHAM V METROPOLITAN ELECTRIC PROTECTIVE ASSOCIATION EBOOKS 2019



Author: Supreme Court of New York

Realese Date: Expected @@expectedReleaseDate@@

The trial court submitted the case to the jury on two theories of negligence, namely (1) that the defendant could be found negligent in blocking the window opening so that it opened only 26 inches instead of a minimum of 30 inches from the sill as required by subdivision 3 of rule 21-6 of the Industrial Code of the State of New York (12 NYCRR 21.6 [a] [2] [iii]) and that such conduct could be found as a proximate cause of the accident; and (2) that the defendant could be found negligent in the installation or maintenance of a nail on the window frame below the anchor hook. The pleadings and the evidence, however, do not support a verdict against the defendant Metropolitan on the latter theory. Consequently, inasmuch as the verdict of the jury was a general one and it is impossible to determine upon what theory a recovery was actually allowed, the verdict for the plaintiff should be set aside and a new trial directed. (Clark v. Board of Educ. of City of N. Y., 304 N. Y. 488; Fein v. Board of Educ. of City of N. Y., 305 N. Y. 611; Yeargans v. Yeargans, 24 A.D.2d 280, 281; Schwartz v. City of New York, 18 A.D.2d 1062; Marks v. New York City Tr. Auth., 11 A.D.2d 993, affd. 13 N.Y.2d 620; Sampter v. Dilbert's Quality Supermarkets, 10 A.D.2d 695.)

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