

EDITORIAL

## JUDGE E.T. BARTLETT.

By DANIEL DE LEON

**B**IOGRAPHIES of Edward Theodore Bartlett, the Judge of Court of Appeals, who died this week, do the Judge injustice in one important respect. The Judge's career is being given quite extensively, extensively quoting from the leading cases which he decided, and citing the principles upon which he set "his stamp." The really leading case Judge Bartlett decided, and the real principle upon which the Judge did set his stamp are omitted by his biographers. The case and the principle are too vital to be allowed to sink into oblivion. They are these:



EDWARD T. BARTLETT  
(1841-1910)

A working girl lost her right arm on account of the defective strapping of the machinery. Owing to the defective strapping her arm was caught and mutilated in such a manner that the whole limb had to be amputated, up to the socket. The girl brought an action for damages against the manufacturing firm. She won out in the lower courts. The firm took the case up to the Court of Appeals; there the judgment was reversed and the case thrown out. Judge Bartlett rendered the decision. It was to this effect: "The girl incurred an obvious risk; he who incurs an obvious risk has no one to blame but himself, and no damages lie."

Working people, generally, not a few Socialists, also, denounced at the time the Judge and the decision as outrageous. They erred. It matters not that Judge Bartlett was not bent upon demonstrating Socialism but upon shielding capitalism. The fact is that his decision places upon the modern factory system, officially, a stamp that Socialist reason has long placed upon the same.

The legal principle of "Obvious Risk" is sound. He who, for instance, undertakes

for pay to save, say, valuable property out of a house on fire, can claim no damages for getting singed, nor his heirs if he never comes out again. He who undertakes for pay to jump into a raging sea to save, say, a child that fell overboard, has “no kick coming” if he gets hurt. Obvious is the risk undertaken in all such instances. An obvious risk undertaken is undertaken with full knowledge of the possible evil results. Such results are, in sound reasoning, not actionable. Judge Bartlett’s decision was a pronouncement that the modern factory is a death-trap; that it is a menace to life and limb; in short, that it is no better than a house on fire, and he who goes into it for work assumes an obvious risk.

The case of the working girl in question was the leading case that came before Judge Bartlett; his decision set the official stamp upon a state of facts that the Socialist Labor Party has {all} along maintained, and in consequence of which the S.L.P. demands the unconditional abatement of the nuisance—capitalism.

Transcribed and edited by Robert Bills for the official website of the Socialist Labor Party of America.  
Uploaded May 2011

[slpns@slp.org](mailto:slpns@slp.org)