

FEBRUARY 15TH, 1912.

*SIVEN v. TEMISKAMING MINING CO.

Master and Servant—Injury to Servant—Accident in Mine—Defective Condition of Works—"Pentice"—Proper Place for—Mining Act of Ontario, sec. 164, Rules 17, 31—Negligence—Findings of Jury.

Appeal by the defendants from the judgment of FALCONBRIDGE, C.J.K.B., 2 O.W.N. 1245, upon the findings of a jury, in favour of the plaintiff, for the recovery of \$2,500 and costs, in an action for damages for personal injuries sustained while working in the defendants' mine.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, J.J.A.

H. E. Rose, K.C., and G. H. Sedgewick, for the defendants.
A. G. Slaght, for the plaintiff.

GARROW, J.A.:— . . . The plaintiff claimed to recover under the common law, the Mining Act, and the Workmen's Compensation for Injuries Act.

The plaintiff was severely injured and disabled by a piece of rock falling down the shaft in which he was working, through no fault of his. This rock came through a man-hole situated above the mouth of the shaft, where men were engaged in what is called "stopping." The stope is an overhead excavation, which was being made in the roof of the 300-foot level, below which was the shaft or winze in which the plaintiff was working. There was, at the time, a trap-door or covering over the mouth of the shaft or winze in which the plaintiff was, but which unfortunately was open at the time of the accident. If it had been closed, the injury to the plaintiff would not have occurred. This trap-door could not be and was not intended to be kept closed all the time. It had to be opened from time to time to permit men to pass up and down with the drills which the plaintiff was using, and it was open at the time, so the plaintiff said, to let the drill bucket down.

Before proceeding with the stopping, Kelly, the workman in charge, sent his helper (Crabbe) to see that this trap-door was closed, and Crabbe called back that "everything was all right," upon which the stopping proceeded.

*To be reported in the Ontario Law Reports.