

SEPTEMBER 21ST, 1914.

MUSUMICCI v. NORTH DOME MINING CO.

Master and Servant—Death of Servant—Workman Employed in Mine—Explosion—Negligence—Failure to Inspect—Findings of Jury—Evidence—Mines Act, R.S.O. 1914 ch. 32, sec. 164, Rule 10.

Appeal by the defendant company from the judgment of LENNOX, J., at the trial, upon the findings of a jury, in favour of the plaintiff.

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

M. K. Cowan, K.C., and J. W. Pickup, for the appellant company.

F. Denton, K.C., for the plaintiff, the respondent.

The judgment of the Court was delivered by MEREDITH, C.J.O.:—The action is brought under the Fatal Accidents Act, on behalf of the widow and children of Salvatore Musumicci, deceased, who was killed by an explosion which occurred in the mine of the appellant, in which the deceased was working on the 21st March, 1913.

The deceased was a helper to Marco Dementitch, another employee of the respondent, who had charge of the drilling-machine in number 5 drift in the mine, and operated it.

Thirteen holes had been drilled in this drift by Dementitch, and the charges in them had been exploded on the morning of Thursday the 20th March. According to the testimony of Dementitch, after the holes had been charged and the fuse lighted, he and the deceased ascended to the surface and listened for the reports of the explosion, and heard "all the shots go off"—i.e., satisfied himself that an explosion had taken place in each of the holes. Some of the timbers in the mine were displaced by the explosion, and, on the afternoon of Thursday, Dementitch was instructed by Grierson, the captain of the mine, to "fix" them. He and two other employees, Cassidy and Orek, were engaged on that work until nearly midnight, when it was completed.

While this work was going on, the deceased was engaged in "levelling down the drift to put down the air-pipe," and mucking back.