

SUPREME COURT OF ONTARIO.

FIRST APPELLATE DIVISION.

FEBRUARY 23RD, 1914.

DEMENTITCH v. NORTH DOME.

5 O. W. N. 932.

Negligence—Master and Servant—Miner Injured by Unexploded Blast—Mining Act 1908, s. 164, Rules 10, 31—Duty of Mine Captain to Inspect—Employment of Inexperienced Man in Hazardous Duty—Findings of Jury—Evidence to Warrant—Further Finding by Appellate Court—Estimated Earnings—Computation—Workmen's Compensation for Injuries Act.

SUP. CT. ONT. (1st App. Div.) *held*, that it was the duty of a mine captain to whom it had been reported that certain blast holes had blasted badly to examine them before sending an inexperienced man to reblast other holes in the immediate vicinity.

Judgment of LATCHFORD, J., at trial, affirmed.

Appeal by the defendant from a judgment of HON. MR. JUSTICE LATCHFORD, dated 30th October, 1913, which was directed to be entered on the findings of the jury after the trial of the action at Haileybury on the previous day.

The appeal to the Supreme Court of Ontario (First Appellate Division), was heard by HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE, and HON. MR. JUSTICE HODGINS.

H. E. Rose, K.C., for appellant.

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

HON. SIR WM. MEREDITH, C.J.O.:—The respondent is a miner and was employed by the appellant to operate a drilling machine in the appellant's mine, and while engaged in that work on the morning of the 21st March, 1913, the respondent was seriously injured owing to an explosion which took place, and his action is brought to recover damages for his injuries and is based on the allegation that they were due to the negligence of the appellant.

According to the evidence, the operation which was going on in the mine at the time of the accident was for the purpose of blasting in a new drift at the 250 foot level. The respondent was in charge of a drilling machine, which was used for perforating holes in the face of the rock, and was assisted by a helper named Mecca, who was