

DECEMBER 6TH, 1911.

## TORONTO CONSTRUCTION CO. v. STRATI.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

S. C. R.

*Negligence—Explosion of Dynamite—Evidence—Inferences.*

Appeal from a decision of the Court of Appeal for Ontario, 19 O. W. R. 88, affirming the judgment at the trial in favour of the plaintiff (respondent).

The plaintiff brought this action as administrator of an Italian named Lanata, who was killed while in the employ of the defendant company, who were at the time engaged in construction work for the Canadian Pacific Railway Co., in Grenville county, Ont. Lanata at the time of the accident by which he was killed, was employed as powder monkey, and in charge of a shack in which frozen dynamite was thawed out. The shack was about 14 by 16 feet in size, with a wooden door, which was not kept locked when Lanata was out, and into which the foreman of the works and the workmen used to go to get warmed. There was a sheet iron stove in the centre of it, fed with wood from the top and the dynamite was placed on shelves around the walls and on a movable shelf about four feet from the front of the stove. On the day he was killed, Lanata had been sent by the foreman to get some dynamite from the shack, and according to the evidence had either not got inside or had got in and out again when an explosion took place, and he was found alive, his body intact and his clothing torn and burning, having apparently been thrown against the stump of a tree near the entrance to the shack.

Under these circumstances the trial Judge gave judgment against the defendants for \$2,000, which the Court of Appeal affirmed on the ground that the mode of thawing the dynamite was dangerous and contrary to the directions issued with each box, which directions were not read to nor explained to Lanata, who could not read himself, though they were known to the foreman and other officials of the company.

The defendants appealed from the judgment of the Court of Appeal to the Supreme Court of Canada, and were heard