

CLUTE, J., and a jury at Welland, in an action for damages for injuries sustained by plaintiff while in the employment of a firm of Barry & McMurdie, contractors, by reason of the negligence of the employers, as alleged. Barry, one of the partners, died before action, and the defendants were McMurdie and the executors of Barry.

Plaintiff was injured by the explosion of some dynamite while engaged in the construction of a sewer which the contractors were blasting at Niagara Falls, while working as helper to one Forsyth, a driller, also in the employ of defendants. The drill struck some dynamite mining in a hole formerly drilled, which failed to explode along with other charges, but did explode when struck by the drill. Plaintiff alleged that defendants were liable by reason of a defective and unsafe system adopted by them, subjecting their workmen to unnecessary peril, and in placing defective and dangerous explosives at their disposal for prosecuting the work. Plaintiff was injured in the afternoon of the first day he commenced to work, and had been given no particular instructions or warning, but said he knew there was danger in the work he was entering upon.

The jury found that defendants were guilty of negligence that caused the accident, and that such negligence consisted in having no organized system of inspection of the work and appliances in general; that the battery was defective, and no care had been taken to make sure that the charge in every hole had been exploded; and that plaintiff had been guilty of no contributory negligence.

The motion was heard by BOYD, C., STREET, J., MABEE, J.

E. E. A. DuVernet and F. W. Hill, Niagara Falls, for defendants.

F. W. Griffiths, Niagara Falls, for plaintiff.

BOYD, C.:—There appears to be a very logical connection in the various sentences used by the jury in answering the questions submitted. They find on the evidence that "the battery was defective." That defect manifested itself by the battery usually shooting off 2 or 3 holes instead of 4. . . . Then the jury find that there was "no care taken to make sure that the charge in every hole had been exploded." This