

Held, 1. Cheques on the Dawson branch for the amount of interest at those rates up to 31st January, 1902, and charged to defendants' overdrawn account then should be considered as payment of that interest, as defendant afterwards deposited money sufficient to change the overdrawn account into a credit balance, and the defendant could not recover such interest or any part of it although it was in excess of the seven per cent. rate which the Bank Act permits the bank to charge.

2. The bank was not entitled, under ss. 80, 81 of The Bank Act, to sue for and recover seven per cent. interest after January 31, 1902, but could only recover interest at the legal rate of five per cent. per annum on the principal then due.

Tupper, K.C., and *Minty*, for plaintiff. *Haggart*, K.C., and *Whitla* for defendant.

Province of British Columbia.

SUPREME COURT.

Full Court.]

GUNN v. LE ROI.

[June 16.

Master and servant—Employers' Liability Act—Dangerous place Duty to warn workmen.

Appeal by defendants from judgment of IRVING, J., in favour of plaintiff. G. had been working in the defendants' mine on the floors immediately below the 600 foot level, and on the night of the accident when he was going to work he was told by the shift whom he was relieving that the place was in pretty bad shape and to look out for it. He proceeded to make an examination, but while thus engaged the mine superintendent directed him to do some blasting, and while doing it a slide occurred and he was injured. The principal evidences of the likelihood of a slide were two floors beneath the 600 foot level, and of which the superintendent was aware and G. not aware. The jury found that the superintendent was negligent in as much as he did not advise G. of the probable danger.

Held, in an action under the Employers' Liability Act, that the defendants were liable.

Where a workman is put to work in a place where there is an imminent danger of a kind not necessarily involved in the employment and of which he is not aware, but of which the employer is aware, it is the employers' duty to warn the workman of the danger.

Davis, K.C., for appellants. *MacNeill*, K.C., for respondent.