

defendants are given an opportunity to send their agents to examine the limits; and, if the agents' report shews the quantity of timber mentioned in the schedule, then the defendants are to increase their purchase-money by delivering over certain shares, otherwise not.

Thus the schedule is referred to merely by way of description; but, it not being made a part of the contract, the statements contained in it do not amount to a warranty.

That being the case, the defendants cannot recover for breach of warranty; and, as they fail on both grounds, the appeal must be dismissed with costs.

FEBRUARY 23RD, 1913.

DEMENTITCH v. NORTH DOME MINING CO.

*Master and Servant—Injury to Servant Working in Mine—Negligence—Mining Act of Ontario, 1908, sec. 164, Rules 10, 31—Failure to Observe—Negligence of Captain of Mine—Failure to Inspect—Findings of Jury—Evidence to Warrant—Supplementary Finding by Appellate Court—Damages—Workmen's Compensation for Injuries Act—Estimated Earnings—Computation.*

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

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

H. E. Rose, K.C., and J.W. Pickup, for the appellant company.

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

The judgment of the Court was delivered by 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.