DAVIDSON v. PETERS COAL CO.—MULOCK, C.J.Ex.D.—APRIL 25.

Master and Servant—Injury to Servant—Negligence—Use of Explosives — Unguarded Receptacle — Cause of Injury—Negligence of Servant—Findings of Fact of Trial Judge.]—The plaintiff, whilst in the employment of the defendants, was injured by an explosion of blasting powder contained in an open pail, and brought this action, under the Workmen's Compensation for Injuries Act, for damages because of such injury. The negligence charged was in supplying an open pail in which to handle the blasting powder. The action was tried before the Chief Justice without a jury. He found that the pail was supplied by the defendants of their own motion, and that they were negligent in so supplying it; but he was of opinion that the plaintiff had not shewn that that negligence was the cause of the injury. In a written opinion, he made an exhaustive examination of the evidence, and stated his conclusion as follows: From the evidence, I entertain no doubt that the plaintiff deposited the pail within a foot or two of the fuse in the hole (in quarrying stone), and that the sparks from the fuse fell into the pail and thus caused the explosion. The plaintiff's theory that sparks might have adhered to his sleeve and fallen into the pail, at a distance from the hole, was not supported by the evidence. The sparks would not live long enough. The evidence as to whether the small sparks would ignite is conflicting. From the practical test made in Court, it is clear that no sparks would keep alive during the time required to go a distance of two feet from the point of ignition. Further, sufficient time did not elapse between the ignition of the fuse and the explosion to have allowed immediately of the plaintiff's clothing being so far consumed as to fall away in sparks. There is no evidence whatever to shew that the plaintiff's clothing was set on fire or that any sparks lit upon his clothing. There is ample evidence, however, that the sparks flew directly from the fuse into the pail. Having regard to the plaintiff's experience as a quarryman, perfectly familiar with the danger incident to the use of blasting powder and of fuses, it was, I think, negligence on his part to have deposited the pail within reach of the falling sparks. If he had used proper care, he would have placed it at a safe distance, and the accident would not have happened. I, therefore, think his own negligence was the cause of his injury; and that, therefore, he is not entitled to recover. This action is, therefore, dismissed without costs. T. J. Blain, for the plaintiff. A. J. Anderson, for the defendants.