

falling; timbering overhead in trench not sufficiently strong to hold a fall of stone liable to fall from overhanging wall." That "the working place was not safe," and that if the walls had been properly examined the stone which fell would have been noticed as dangerous; and lastly, that the unsafe condition of the working was discoverable by a reasonably careful inspection.

I agree with the opinion of Chief Justice Townshend and Meagher, J., that on these findings plaintiff was entitled to judgment.

Mr. Newcombe, on this appeal, invoked the doctrine of common employment as a complete answer by the defendant company; he contended that the mine which had laid unworked for some 18 months had been properly examined before work had been resumed by the superintendent of the mine, Kenty, and the managing director; that the inspection was careful and complete, but that whether it was negligent or not the company, having employed competent men, were not liable, and the evidence did not justify the findings.

As to the findings of the jury, I have no difficulty whatever in holding that the evidence was sufficient to sustain them.

The inclination of the hanging wall, as stated by Mr. Harrison, the managing director, was about 30 degrees. The workmen were working immediately below this overhanging wall blasting rock, and when the blasting operations were begun, and no doubt caused by them, the huge stones fell out of the top part of the wall, crushing through an artificial roof or covering built across the mine or excavation and killed the unfortunate miner, McDougall. The inspection made, as described by the superintendent, Kenty, was superficial and fully justified the jury's finding that it was not a reasonably careful one. Kenty says: "The wall was cracked along in places, ordinary cracks as you would see in any cut, I couldn't see anything to say it was dangerous. It was grassed over to the edge of the cuts; it was impossible to see without cutting away the surface." No cutting or prying into the surface was done and no testing of the cracks. Mr. Harrison, the managing director, who accompanied Kenty, gave similar evidence of the examination which, while it may have satisfied them, was not such an examination as the circumstances called for.