

dried out with dust by Forbes, and after the powder exploded Forbes returned a distance of 40 or 50 yards and removed plaintiff to a place of safety. Up to this time the blast had not gone off, which it did later, but when does not appear. Still from what occurred it is clear that the conditions would have permitted plaintiff to have placed the pail at a safe distance from the hole, if he had so desired it, without any risk of the charge becoming too damp; and further whether Forbes did or did not offer to take the pail away, plaintiff could have had Forbes remove it if he had so desired.

A number of samples of the coil used on the occasion were produced in Court and ignited. The fuse is in the centre of the coil, and when first lighted a shower of sparks flew from the end of the coil, but no spark kept lighted a distance of two feet from the point of origin, and when the fire of the fuse receded into the coil two or three inches, which it did in a couple of seconds, no more sparks came from the coil. Further, the sparks were very small, and most of them died at the very end of the coil, none remaining alive, as already observed, at a point two feet from the end; and I am satisfied that at the time of the explosion the pail with its contents of powder was nearer than two feet to the end of the burning fuse. There was no body to the sparks, so that even if aided by the wind they would expire before travelling ten feet.

From the evidence I entertain no doubt that plaintiff deposited the pail within a foot or two of the fuse in the hole, and that the sparks from the fuse fell into the pail and thus caused the explosion. Plaintiff's theory that sparks might have adhered to his sleeve and fallen into the pail at a distance from the hole is not supported by the evidence. The sparks would not live long enough. The evidence as to whether the small sparks would ignite wearing apparel is conflicting. From the practical test made in Court, it is clear that no sparks 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 plaintiff's clothing to be 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.