

pair of the timbers was completed, it is manifest that that is what he was expected and it was his duty to do. He was on the "night shift," and the only work he had to do after the timbers were repaired was to go on with the drilling, and it was for that purpose that he went down into the mine at 1 o'clock of the morning on which the explosion took place.

At the close of the case for the plaintiff, counsel for the appellant argued that negligence had not been proved and that there was nothing to submit to the jury, but the learned trial Judge refused to give effect to his contention, and left the case to the jury.

The jury found, in answers to questions put to them, that the death of the deceased was caused by the negligence of the appellant, and that that negligence consisted in the appellant "not having proper supervision of the men; for not making an inspection of the last blast especially after using a new kind of powder contrary to the Mining Law of Ontario."

The learned trial Judge left it to the jury to say whether the explosion was caused by the negligence of Dementitch, and their answers shew that they did not think so. While this removes one of the grounds upon which the respondent relied for fixing the appellant with liability, it also operates in her favour because it eliminates Dementitch's negligence as a factor in causing the death of the deceased.

Notwithstanding the able argument of counsel for the appellant to the contrary, I am of opinion that there was evidence to go to the jury and that their findings are supported by the evidence.

As I have said, the work in which Dementitch was engaged when the explosion occurred it was his duty to do, and the appellant is, I think, in no better position than if Dementitch had been expressly instructed to go on with the drilling, and the jury were, I think warranted in coming to the conclusion that the appellant was negligent in impliedly directing or sanctioning Dementitch's proceeding with the drilling without an inspection having been made of the condition of the drift and the holes after the blasting on Thursday, especially as a new kind of powder had been used on that occasion.

Rule 10, sec. 164 of the Mines Act, R. S. O. 1914, ch. 32, provides that "the manager, captain or other officer in charge of a mine shall make a thorough daily inspection of the condition of the explosives in or about the same. . . ." This rule was invoked by the respondent, and it may be that it is