BRITTON, J. JANUARY 3RD, 1902.

TRIAL.

BLANQUIST v. HOGAN.

Master and Servant — Negligence — Voluntarily Continuing in Dangerous Employment.

Action tried at Port Arthur, brought to recover damages for negligence.

F. H. Keefer, Port Arthur, for plaintiff.

N. W. Rowell, for defendant.

The facts appear in the judgment.

BRITTON, J.—The plaintiff is a miner employed by defendants, and was injured by the premature explosion of dynamite placed in a hole drilled by plaintiff. It was alleged that defendant was (1) personally negligent in not thawing the dynamite, and (2) that he caused drills to be made smaller than those heretofore in use and too small for the cartridges being used. The plaintiff had lost to a great extent the use of his left arm and hand. A nonsuit was refused at the close of the plaintiff's case. The jury found in answer to eight questions submitted that defendant undertook to thaw the dynamite, that he was negligent in not knowing the exact size of the dynamite provided, that plaintiff knew the dynamite was partly frozen and dangerous, and he knew the dangerous character of the work, and voluntarily undertook it, but could not by the exercise of reasonable care have avoided the accident, and in answer to the fifth question that the smaller drills as used were sufficient for the use of one inch sticks of dynamite.

I do not think that there was any evidence of negligence of defendant to go to the jury. The plaintiff knew his danger, had the means of avoiding it, but voluntarily continued: Woodley v. Metropolitan D. R. W. Co., 2 Ex. D. 384; Thrussel v. Handyside, 20 Q. B. D. 359. The second branch of the case is disposed of by the answer to the fifth question. There is no evidence of use of any other than one-inch sticks, and the drills used were one and five-sixteenth inch bit. I dismiss the action, but do not give costs because the plaintiff did not ask for them.

Frank H. Keefer, Port Arthur, solicitor for plaintiff.

W. F. Langworthy, Port Arthur, solicitor for defendant.

JANUARY 6TH, 1902.

DIVISIONAL COURT.

RE GEDDES AND COCHRANE.

Landlord and Tenant—Renewal of Lease—Covenant—Construction of—Increased Rent—Average for Renewal Term.

Motion by the landlord for the opinion of the Court upon