

the fuse and in running away stooped to pick up the pail and the powder exploded. His theory is that the explosion was caused either by a spark direct from the fuse or a spark which had lit upon his clothes and fallen into the pail as he stopped to pick it up.

The evidence convinces me that plaintiff did not put the pail in a place of safety 10 or 12 feet away, but deposited it within arm's length of the hole in question, and that the explosion was caused by sparks flying from the lighted fuse directly into the pail.

Plaintiff told Forbes, when being taken home after the accident, that sparks had flown from the fuse into the pail. When Forbes left the hole plaintiff was still working at it, and the pail was standing within his reach. Ford, after the accident, rejoined Forbes and plaintiff, and heard the latter tell Forbes that the powder caught fire from the fuse.

Thomas Morrison, defendant's foreman, was examined as a witness on their behalf, and though his manner of giving evidence was unsatisfactory, I cannot say his evidence was undeserving of credence. He testified that plaintiff told him the pail was within a foot or a foot and a half of the hole, and that the explosion was caused by sparks from the fuse.

John Backus, another of defendants' witnesses, stated that in answer to a question of how the accident happened plaintiff replied that he had placed the can too near the hole, within 18 inches or 2 feet; that Backus asked him if he thought the accident would have happened if the pail had been put behind plaintiff, when he said he did not think it would.

Harry Hoskins, another witness for the defence, swore that he appeared on the scene shortly after plaintiff's injury, when plaintiff stated that when he lit the fuse it "spit" into the pail.

D. Stewart and William Sweaton, Jr., impressed me as not being truthful witnesses.

Plaintiff denies having told anyone that the pail was left within two or three feet of the hole, also that Forbes offered to remove the powder and coil. At most plaintiff only claims to have moved the pail 10 or 12 feet from the hole, and gives as a reason for not removing it farther the fact that the hole was a damp one and the powder if allowed to remain very long in the hole would become too damp and not explode. This examination does not appear to me satisfactory. The hole in question was damp, but it had been