

in place, charging them with blasting powder and exploding the charges.

On 9th November, 1911, plaintiff along with two fellow-workmen, Forbes and Ford, had drilled a hole in the rock when plaintiff proceeded to the blacksmith's shop for powder and fuse, and filling a pail with blasting powder carried it along with a coil of fuse to the place where the hole had been drilled, and there put in the charge. When the fuse was about ready to be lighted Forbes left for the purpose of preventing a team approaching the stone. When leaving, plaintiff was still working at the hole, and according to Forbes' evidence the pail with the unused portion of powder in it was on the ground within reach of plaintiff, and Forbes, as was customary, offered to take it away, but plaintiff declined the offer observing that he could manage it himself. When Forbes had gone about 40 or 50 yards from the hole he turned around and observing a cloud of smoke, though the blast had not gone off, returned to plaintiff and finding him injured by the explosion removed him to a place of safety before the blast exploded.

The negligence charged against defendants is for supplying an open pail in which to handle the blasting powder. The pail in question was not, in my opinion, a proper vessel for the purpose in question. An attempt was made at the trial to fasten upon plaintiff the responsibility for its use, but I find that it was supplied by defendants of their own motion. Plaintiff used it, but that fact did not relieve defendants from performing their duty to supply a proper pail, and they were, I consider, negligent in not having done so.

But plaintiff must shew that such negligence was the cause of the accident. Has he done so? Plaintiff was 32 years old; had had 15 years practical experience as a quarryman, both in drilling and blasting, and fully knew the danger to arise from the careless handling of blasting powder. When engaged on behalf of defendants nothing was said as to his duties, and he considered himself engaged as a labourer not to be called upon to perform the work of blasting. Later on, however, at the request of the foreman he also did blasting for defendants.

As to how the accident in question happened plaintiff's evidence is to the effect that after he put the powder in the hole he placed the pail about 10 or 12 feet away in the direction he intended to run, returned to the hole, set fire to