

there was no powder, and consequently the fuse, which was trimmed to burn a foot a minute, caused the explosion prematurely; and (5) plaintiff claimed \$5,000 damages. . . .

It was admitted that if the order can be sustained, it must be under the last clause of Rule 162 (e), which allows service to be made on a foreign defendant when the action is founded on a tort committed within this province. There is no such provision in the corresponding English Rule, nor, so far as I am aware, is there any similar procedure in the United States.

The question, therefore, to be decided, is important and not free from difficulty. Apparently now for the first time the point arises in our Courts, does the statement of claim disclose any tort committed by defendants in Ontario?

Mr. Phelan, with much ingenuity and vigour, contended that this action would lie. He conceded that a tort was "the infringement of some absolute right to which another is entitled:" Underhill on Torts, Canadian ed., p. 7; Addison on Torts, 7th Eng. ed., p. 1. He then argued that such a right was always localized, whether such right exists in respect of a man's property or of his character; and that in respect of his bodily welfare it necessarily went with him, and so that wherever he was injured, there a tort was committed, if such injury was the result of the wrongful act of another. And in this case he submitted that plaintiff having been, as alleged, seriously injured by the defective fuse of defendants' manufacture, there had been a tort committed by them within Ontario which enabled him to bring this action. . . .

[Reference to *Thomas v. Winchester*, 6 N. Y. 397; *Pollock on Torts*, 6th ed., p. 487 n., 488; *Dixon v. Bell*, 5 M. & S. 198; *Langridge v. Levy*, 2 M. & W. 519, 4 M. & W. 337; *Francis v. Cockrell*, L. R. 5 Q. B. 184, 501; *Earl v. Lubbock*, [1904] 1 K. B. 253, 74 L. J. N. S. K. B. 121; *Heaven v. Pender*, 11 Q. B. D. 503, 517; *Winterbottom v. Wright*, 10 M. & W. 109, 62 R. R. 534.]

There is no doubt that the statement of claim alleges an injury suffered by plaintiff in Ontario. But before he can sustain an action for a tort committed by defendants in Ontario, he must shew that defendants owed him as a duty, which they did not fulfil, to send out only perfect fuses, and that as a result of this he was injured. As I under-