

hole No. 3, that the hole in question was deliberately, or at all events, intentionally, charged by someone. There was only one person who had the right to do this. This was Galzarino, the foreman, who came upon the works that morning, and who was expressly and distinctly put in superintendence of the works being carried on, and particularly of the blasting operations, and which included as incident thereto drilling, plugging, cleaning out, loading, covering, and firing. The defendant put the plaintiff under the charge of the foreman as his assistant. He assisted in exploding the first and second holes, and the foreman then set him at work cleaning out the third hole and watched him for at least part of the time he worked at this. The defendant came along and assisted the plaintiff in this work, and had only temporarily stepped aside to look for or speak to the foreman in possession of the dynamite, and swears that no one else at the works that morning had dynamite.

He further says upon the undisputed facts and circumstances given in the evidence in this case, "I am not prepared to accept Galzarino's statement that he did not put dynamite in the hole in question, although it is possible that he is saying what he believes to be true, but on the contrary, I think, that the only reasonable conclusion to be reached is, and I find it as a fact, that Frank Galzarino did place dynamite in hole No. 3."

This we think the only proper inference to draw upon the evidence, and that doing so, we have the simple case of the foreman himself partially filling the hole No. 3, and giving no warning that the same was only partially filled or contained dynamite; and having forgotten the fact, set the plaintiff to work to clean out the hole, from which work, and while so doing, the accident occurred.

It seems to us the clearest kind of a case against the defendant. It was negligence of the grossest kind by a person having superintendence within the meaning of the Act. The case also clearly falls within sub-sec. 3 of sec. 3 of the Act, as the plaintiff had been expressly told to obey the orders of the foreman, at whose instance he did the work. *Osborne v. Jackson*, 11 Q. B. D. 619; *Cox v. Hamilton Sewer Pipe Co.*, 14 O. R. 300. In *Kearney v. Nichols*, 76 L. T. J. 63, it was held that it is not necessary that such superintendence should be exercised directly over the workman injured or that the workman should be acting under the immediate orders of such superintendence. It is enough if the superintendent