

APPELLATE DIVISION.

SEPTEMBER 21ST, 1914.

MUSUMICCI v. NORTH DOME.

7 O. W. N. 48.

Negligence—Master and Servant—Fatal Accidents Act—Explosion in Mine—Failure to Inspect—Mines Act R. S. O. 1914 c. 52 s. 164, Rule 10—Findings of Jury—Evidence—Appeal.

SUP. CT. ONT. (1st App. Div.) in an action for damages for the death of a workman by reason of an explosion in a mine held, that there was evidence to support the finding of the jury that defendants were negligent in inspection.

Judgment of LENNOX, J., affirmed.

M. K. Cowan, K.C., and J. W. Pickup, for appellant.

F. Denton, K.C., for respondent.

Appeal by the defendant from the judgment dated 4th May, 1914, which was directed to be entered by Lennox, J., on the findings of the jury at the trial at North Bay on the 7th of April, 1914.

The action was brought under the Fatal Accidents Act, on behalf of the widow and children of Salvatore Musumicci, deceased, who was killed by an explosion which occurred in the mine of the appellant, in which the deceased was working on the 21st of March, 1913.

HON. SIR WM. MEREDITH, C.J.O.:—The deceased was a helper to Marco Dementitch, another employee of the respondent who had charge of the drilling machine in No. 5 drift in the mine and operated it.

Thirteen holes had been drilled in his drift by Dementitch, and the charges in them had been exploded on the morning of Thursday the 20th March. According to the testimony of Dementitch, after the holes had been charged and the fuse lighted, he and the deceased ascended to the surface and listened for the reports of the explosion, and heard "all the shots go off," . . . i.e., satisfied himself that an explosion had taken place in each of the holes. Some of the timbers in the mine were displaced by the explosion, and, on the afternoon of Thursday, Dementitch was instructed by Grier-son, the captain of the mine, to "fix" them. He and two