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No. 2

DIVISIONAL COURT.

SEPTEMBER 16TH, 1912.

DAVIDSON v. PETERS COAL CO.

3 O. W. N. 1160; 4 O. W. N. 36.

Negligence—Master and Servant—Injury to Servant—Use of Explosives—Unguarded Receptacle—Cause of Injury—Negligence of Servant—Findings of Fact of Trial Judge—Appeal.

Action under Workmen's Compensation Act for damages for personal injuries sustained by plaintiff, a quarryman, by the explosion of certain blasting powder, alleged to have been caused by the negligence of defendants. The blasting powder was carried in a pail, but the evidence shewed that plaintiff had left it within two feet of the sparks from a fuse which he had ignited to fire a blast.

MULOCK, C.J.Ex.D., *held*, that while defendants were negligent in supplying only a pail in which to carry blasting powder, yet the negligence of plaintiff and not that of defendants was the cause of the accident.

Action dismissed without costs.

DIVISIONAL COURT dismissed appeal from above judgment with costs.

An appeal by the plaintiff from the following judgment of HON. SIR WM. MULOCK, C.J.Ex.D.

T. J. Bain, for the plaintiff.

A. J. Anderson, for the defendants.

HON. SIR WM. MULOCK, C.J.Ex.D. (25th April, 1912) :—
Plaintiff whilst in the employment of defendants was injured by an explosion of blasting powder contained in an open pail, and brings this action under the Workmen's Compensation for Injuries Act, for damages because of such injury.

The defendants operate a stone quarry in the township of Caledon, and at the time of the accident plaintiff was engaged as one of their employees in getting out stone. This work was accomplished by drilling holes in the stone