

sent for. The defendant, fortunately for him, turned away from the hole when the plaintiff struck another blow. The charge was exploded, and the plaintiff received the injuries complained of.

C. A. Moss, for the defendant, appellant.

N. W. Rowell, K.C., for the plaintiff, respondent.

HON. MR. JUSTICE CLUTE:—It was strongly urged by Mr. Moss, that Galzarino, although foreman in a sense, and having the right to dismiss the men then engaged upon this job, yet did not have superintendence intrusted to him within the meaning of sec. 3, sub-sec. 2, of the Workmen's Compensation for Injuries Act.

The trial Judge found as a fact that the evidence did bring the case within the Act.

We think the evidence is clear upon this point. The defendant says: "I engaged a competent foreman of twelve years' experience, Galzarino. On the morning of the accident I had men working there. I said to them, 'This is your foreman. If this man sends a man home I stand by him.'"

"Q. Did you tell Joe that? A. Yes. I said to Joe, 'You have nothing to do with the loading or the unloading of the dynamite. I pay a man more wages than you to do that.'"

Q. Who looks after the cleaning out of the holes? A. The foreman.

Q. He is the person who superintends that? A. Yes, that is his duty.

Q. He was on hand with you and superintended Joe in the cleaning out of these holes? He was there? A. Yes, he was there with the dynamite. He was standing behind."

The foreman stated that he had acted as foreman for seven years in the handling of dynamite. That he was foreman for Donatti, and was hired because of such experience. That he was in charge of the work that day, and Donatti was there also. That he loaded the two holes and exploded them. That he put a cover on the other holes. That five holes were drilled altogether and two others were covered. He further states that the holes were $2\frac{1}{2}$ feet deep and $1\frac{1}{4}$ sticks of dynamite was put in or $1\frac{1}{2}$.

The trial Judge has found, and we think the finding is amply supported by the evidence, that the five holes were drilled on the morning of the accident, and the drilling was only completed a few minutes before the explosion of this