

Kelly was examined as a witness, but Crabbe was not. It was Crabbe's duty, as Kelly said, not only to see that this trap-door was closed, but to remain near and see that it remained closed while the stoping operation was going on. That he did not do so is made evident by the undisputed fact that it was open—or the plaintiff would not have been injured in the manner in which, no one disputes, he was injured.

The learned Chief Justice left the case to the jury in a very full and careful charge, to which no substantial objection was taken, and the jury answered the questions submitted as follows:—

1. Were the plaintiff's injuries caused by the negligence of the defendants? A. Yes.

2. If so, what was their negligence? A. In not finding proper pentice over the man-hole into the stope.

3. Did the defendants fail to provide a suitable pentice for the protection of workmen in the shaft in which the plaintiff was injured (as required by sub-sec. 17 of sec. 164 of the Mining Act of Ontario)? A. Yes.

4. Did the defendants fail to comply with sub-sec. 31 of sec. 164, by examining the working shaft, level, and stope, in order to ascertain that they were in a safe and efficient working condition? A. We are of opinion that the shift boss or other officer going through the mine in the ordinary discharge of his duties does not fulfill the requirements of this sub-section. There has been no evidence produced to shew that systematic examination of the work was carried out.

5. Was the plaintiff guilty of negligence which caused the accident or which so contributed to it that but for his negligence the accident would not have happened? A. No.

6. If you answer "yes" to the last question, wherein did his negligence consist? (No answer.)

7. At what sum do you assess the damages, in case the plaintiff should be entitled to recover? A. \$2,500.

It was conceded that the action could not be maintained under the Workmen's Compensation for Injuries Act, because it had not been commenced in time. . . .

In my opinion, the plaintiff established a good cause of action for a breach of Rule 17 of sec. 164 of the Mining Act, 8 Edw. VII. ch. 21, which provides that, "where a shaft is being sunk below levels in which work is going on, a suitable pentice shall be provided for the protection of the workmen in the shaft." The shaft . . . was being sunk below a level in which work was going on. The circumstances, therefore, called upon the defend-