

matter, and afforded him an opportunity of exercising his undoubted right. I am sure the learned trial Judge will agree with me that whatever may be the presumption as to the prisoner's guilt or innocence, and whether he is defended with skill and judgment or the reverse, it is always the duty of the presiding Judge to see to it that nothing shall prevent the prisoner from having a fair trial and British justice.

DIVISIONAL COURT.

DECEMBER 11TH, 1912.

NIGRO v. DONATTI.

4 O. W. N. 453.

Negligence—Master and Servant—Explosion of Dynamite—Negligence of Foreman—Deduction of Money Paid for Relief of Workman—Superintendence.

LENNOX, J., in an action for damages for personal injuries caused by an explosion of dynamite, alleged to have been the result of the negligence of defendant's foreman, gave judgment for plaintiff under the Workmen's Compensation Act for \$1,446, being \$1,500 less amounts paid by defendant for hospital and doctor's bills and costs.

DIVISIONAL COURT dismissed appeal therefrom with costs.

Appeal by defendants from judgment of LENNOX, J., 22 O. W. R. 974; 4 O. W. N. 2, in an action tried at Port Arthur, without a jury, on the 5th June last. Judgment in favour of the plaintiff for \$1,446, was given on the 10th September, from which judgment the defendant appeals.

The defendant was a contractor engaged at the time of the accident in blasting rock for a sewer in one of the streets at Port Arthur. The plaintiff was in his employ assisting at the work. It would appear that the defendant with some care had selected one Galzarino, who had had a long experience in the handling of dynamite, and placed him in charge of the work.

Five holes were drilled to receive the dynamite. Numbers 1 and 2 were charged with dynamite by the foreman, Galzarino. These two charges were exploded without injury. Number 3 was also charged (it is alleged also by Galzarino) with a small amount of dynamite. This was left unexploded and without notice to the men. The plaintiff, without knowledge that the hole contained dynamite, proceeded with the defendant personally to drill the hole deeper. A short drill was used; a longer drill was required. This was