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*Oct. 11.
*Oct. 17.

JOSEPH PAQUET (DEFENDANT).....APPELLANT;

AND

JUSTE DUFOUR (PLAINTIFF).....RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC.

Negligence—Dangerous operations—Defective system—Findings of fact—Common fault.

The Supreme Court of Canada affirmed the unanimous judgments of the courts below, whereby it was held that defendant was liable in damages for injuries sustained by the plaintiff through an accident which occurred in consequence of a defective system of blasting rocks with dynamite permitted by his foreman on works where the plaintiff was engaged by him in a dangerous operation. *The Montreal Rolling Mills Co.* v. *Corcoran* (26 Can. S.C.R. 595), and *Tooke* v. *Bergeron* (27 Can. S.C.R. 567) distinguished.

The plaintiff had been guilty of contributory negligence and damages apportioned according to the practice in the Province of Quebec.

APPEAL from the Court of King's Bench, appeal side, affirming the judgment of the Superior Court, District of Quebec, by which the plaintiff's action was maintained with costs.

The plaintiff was a skilled miner employed by the defendant to use dynamite in blasting rock excavations on a contract for the construction of a railway. The place where he was working at the time of the accident being at a distance from the electric battery generally used for igniting the fuses attached to the charges of dynamite to explode them, the system adopted was to ignite these fuses with a red-hot poker

*PRESENT:—Sir Charles Fitzpatrick C.J. and Girouard, Davies, Idington and Duff JJ.

supplied for that purpose. At the time when the accident occurred, the defendant's foreman permitted the plaintiff to light the fuses by means of torches made of birch bark without protesting against the danger of such a method. When he had lighted one of the fuses, the plaintiff threw the torch away, as he ran off to take shelter and, by this means, another fuse in close proximity became ignited without his knowledge. On his return to set off the charge to which the last fuse was attached, he was injured by a premature explosion.

In an action for damages His Lordship Mr. Justice Langelier found, at the trial, that the accident was the result of common fault; that of the defendant in failing to supply a safe means of carrying on dangerous work and that of the plaintiff by imprudence in negligently using the torch. By the judgment the damages assessed by him were apportioned, the plaintiff being held responsible for a share thereof and the defendant condemned for the amount of the balance, $2,000, with costs. This judgment was affirmed by the judgment appealed from.

L. P. Pelletier K.C. and *Bernier* for the appellant.

Fiset and *Grenier* for the respondent.

THE CHIEF JUSTICE.—In this case the two courts below find that the accident was caused by the negligence of the appellant in respect of the appliances supplied for the purpose of carrying on what was, under the circumstances, a dangerous operation, and I see no sufficient reason to depart from that finding.

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Girouard J.

GIROUARD J.—This case involves questions of fact found by two courts and I think the evidence adduced far from supporting the appellant's view justifies their conclusion.

He contends that the cases of *The Montreal Rolling Mills Co.* v. *Corcoran*(1), and *Tooke* v. *Bergeron* (2), are parallel.

Of course, every case of this kind must be decided according to the proof, whether direct or derived from presumptions. The *Corcoran Case*(1) is certainly not a similar one, for we held, in that case, that the cause of the accident was a mystery and left to mere conjectures.

Likewise it may be said that the *Tooke-Bergeron Case*(2) differs essentially from the present one, as we there held that the negligence of the victim of the accident was the principal and immediate cause of the injury, and that she had acted contrary to the regulations of the establishment.

Here, on the contrary, the work done by the respondent which caused the accident was expressly sanctioned by Tremblay, the foreman of the appellant. True, he denies this, but he is contradicted, not only by the plaintiff, but also by George Gagnon and Adjutor Lavoie. Not only the trial judge but the judges of the court of appeal believed the story of these three men instead of that of Tremblay and we should not interfere with their finding.

Before closing, I wish to point out a *considérant* of the trial judge to which I cannot subscribe:

> Considérant que la dite explosion ayant été causée par de la dynamite dont le défendeur était le propriétaire et dont il avait la

(1) 26 Can. S.C.R. 595. (2) 27 Can. S.C.R. 567.

garde, il doit être tenu responsable des dommages qui en sont résultés pour le demandeur, à moins qu'il n'ait prouvé qu'il lui a été impossible de l'éviter.

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We have so often decided in our court that proof of fault, whether by direct evidence or by presumptions, rests upon the plaintiff, that it is not necessary to quote authorities.

The appeal should be dismissed.

DAVIES J.—I concur in the opinion stated by His Lordship the Chief Justice.

IDINGTON J.—I think this appeal ought to be dismissed with costs.

DUFF J.—I agree that the appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *Alphonse Bernier.*
Solicitor for the respondent: *L. Philippe Grenier.*