Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of McArthur v. *The Dominion Cartridge Company, Limited, from the Supreme Court of Canada; delivered the* 11*th November* 1904.

Present at the Hearing:

LORD MACNAGHTEN.
LORD DAVEY.
LORD ROBERTSON.
LORD LINDLEY.
SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

This is an Appeal *in formâ pauperis* from a judgment of the Supreme Court of Canada, setting aside the verdict of a Special Jury in favour of the Appellant. The verdict was unanimous. And it had been upheld by the unanimous judgment of the Court of Review for the District of Montreal, and also by the unanimous judgment of the Court of King's Bench for the Province of Quebec. In the Supreme Court Taschereau, J., dissented from his four colleagues.

The facts of the case may be stated very briefly. On the 10th of June 1898 the Appellant, who was in the service of the Respondent Company and then about 18 years of age, was seriously injured by an explosion at the Company's works. There is no direct evidence to show how the explosion occurred. It seems to have originated in an automatic machine used for filling shells or cartridges with powder and shot. The Appellant and another boy of about

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the same age who was his superior, were minding the machine at the time. It was the Appellant's duty to keep the shells with which the machine was fed supplied with shot and wads. The explosion was instantaneous. The flash communicated through a supply pipe with a powder box fixed on the outside of the wall of the room in which the machine stood. The box was placed there so that in the event of an accident the explosion might spend itself in the open air. However, for some reason or other, the box had been strengthened externally, and the force of the explosion took effect inwards. The wall was blown in, the machine knocked to pieces, and the room entirely wrecked.

On the 9th of June 1899, this action was brought in the name and on behalf of the Appellant, then a minor, by his tutor. The case on behalf of the Plaintiff was that the explosion was owing to the fault of the Company. The Company on the other hand denied responsibility, and alleged that the mishap was caused by the negligence of the Plaintiff himself.

The Jury found that the explosion occurred through the fault and neglect of the Company "by their neglect to supply suitable machinery" and "by their neglect to take proper pre-"cautions to prevent an explosion." They also found that the injury of which the Plaintiff complained was not "in any way caused by his "own fault, neglect, or negligence." And they assessed the damages at $5,000.

The learned Judge who presided at the trial reserved the case, as he was authorised to do by the Civil Procedure Code, for the consideration of the Court of Review. That Court dismissed with costs a motion on behalf of the Company for judgment or a new trial, and confirmed the verdict in favour of the Plaintiff. No complaint

was made of the learned Judge's summing up or the way in which the questions were left to the Jury.

In Quebec when an unsuccessful party after verdict moves for judgment or a new trial, the function of the Court under the Civil Procedure Code is the same as the function of a Court of Appeal in this country in similar circumstances. It is not the province of the Court to re-try the question. The Court is not a Court of Review for that purpose. The verdict must stand if it is one which the Jury as reasonable men having regard to the evidence before them might have found, even though a different result would have been more satisfactory in the opinion of the trial Judge and the Court of Appeal.

That there was evidence to justify the verdict in the present case can hardly be disputed. The automatic machine which had been in use for rather over a year was designed in the works of the Company. The designer himself, who was the Company's superintendent and apparently a clever and skilled mechanic, and the man who made the machine under his instructions and direction, spoke of it in terms of the highest praise. But no independent expert was called to echo their encomium or confirm their view of its suitability for the purpose in hand. It was not patented, but still it does not seem to have been adopted in any other works of the sort. In the judgment of the majority of the learned Judges of the Supreme Court, delivered by Girouard, J., it is stated that it was "proved that the machine "was perfect, and worked regularly and properly." But the Company's witnesses did not go so far as that. They admitted that there was room for improvement, and that improvements were to be introduced in a machine that was then being constructed to take its place. The

principal fault or defect of the machine seems to have been in the mechanism used in the last stage of the process. When cartridges are charged they have to be "crimped," that is, the edges have to be turned down so as to hold the charge firmly in its place. The design was that each cartridge, when and as it was loaded, should be clutched by automatic fingers and carried off to another part of the machine and there presented, sitting upright on the inside edge of a hollowed cup, to receive the blow or punch which would complete the operation. But these automatic fingers, occasionally at any rate, acted in an uncertain, not to say an erratic manner. Up to the time of the explosion, though no doubt less frequently at the last than at first, cartridges were now and then presented in a wrong posture, and the blow or punch fell sometimes on the side of the cartridge and sometimes on the metal end in which the "primer" or percussion cap had been inserted. The evidence was that a considerable number of these failures occurred from time to time, and that the injured cartridges were collected and sent away to be "scrapped," or broken up. It seems to be not an unreasonable inference from the facts proved that in one of these blows that failed a percussion cap was ignited and so caused the explosion. There was no other reasonable explanation of the mishap when once it was established to the satisfaction of the Jury that the injury was not owing to any negligence or carelessness on the part of the operator. The wonder really is, not that the explosion happened as and when it did, but that things went on so long without an explosion. Then, too, the Jury may have reasonably thought that the explosion would, or might have been comparatively harmless if the powder box on the outside had been properly constructed.

The learned Judges in the Supreme Court appear to have been much influenced by some decisions in France which are stated by Girouard, J., to be "unanimous in exacting proof of a "fault which certainly caused the injury." The learned Judge had previously observed that "as "to the cause of this explosion . . . we are "left entirely in the dark." As recent French decisions, though entitled to the highest respect, and valuable as illustrations, are not of binding authority in Quebec, the learned Counsel at the Bar very properly abstained from examining in detail the cases referred to by Girouard, J. It is enough to say that although the proposition for which they were cited may be reasonable in the circumstances of a particular case, it can hardly be applicable when the accident causing the injury is the work of a moment, and the eye is incapable of detecting its origin or following its course. It cannot be of universal application, or utter destruction would carry with it complete immunity—for the employer.

Their Lordships will humbly advise His Majesty that the Appeal ought to be allowed, the Judgment of the Supreme Court reversed with costs, and the Judgment of the Court of King's Bench restored. The Respondents will pay the costs of the Appeal as in pauper Appeals.