

that in fact such division can be made without great prejudice or inconvenience, ordinary convenience in procedure requires the determination of that question before discussion of the proposition whether upon the facts stated a sale of the whole can be ordered.

Case discharged.

Hillsborough, }
April 6, 1915. }

WILLIAM BASSETT, JR., v. CLARENCE H. DODGE & a.

CASE, for negligently burning the plaintiff's buildings. Trial by jury and verdict for the plaintiff. The defendants' motions for a nonsuit and a directed verdict were denied, and they excepted. Transferred from the May term, 1914, of the superior court on a bill of exceptions allowed by *Pike*, C. J.

The defendants drilled a shallow hole in a stone which was located a few yards from an old mill, loaded it with dynamite, and exploded the charge with a fuse. The force of the explosion threw the fuse upon the roof of the mill, and the fire which resulted was communicated to the plaintiff's property.

Taggart, Burroughs, Wyman & McLane (Mr. Wyman orally), for the plaintiff.

Branch & Branch and Nathaniel E. Martin (Frederick W. Branch orally), for the defendants.

YOUNG, J. The evidence that it is not uncommon for such a blast to throw the fuse as far as this one was thrown, or for the fuse to contain fire, and that it sometimes contains fire enough to ignite inflammable materials, warrants the finding that the defendants ought to have known that if they exploded the blast at the time and in the way they did they might set the mill on fire. Therefore, the question whether they were in fault depends upon whether the ordinary man would have exploded such a blast, in such a place, in such a way, on such a day, without doing anything whatever to protect the plaintiff's buildings; and that was for the jury.

Exceptions overruled.

All concurred.