

## HIGH COURT DIVISION.

SUTHERLAND, J.

SEPTEMBER 17TH, 1917.

CLEMENT v. NORTHERN NAVIGATION CO. LIMITED.

*Negligence—Carriers—Waggon Delivered on Government Wharf and Left in Dangerous Position—Injury to Child by Overturning of Waggon—Responsibility of Carriers—Finding of Jury—Nuisance—Finding of Trial Judge.*

Action by F. A. Clement and Josephine Clement, husband and wife, to recover damages, under the Fatal Accidents Act, for the death of their infant son, 6 years old, by reason of the negligence of the defendants or of a nuisance for which they were responsible, as the plaintiffs alleged.

The action was tried with a jury at Sault Ste. Marie.  
 J. E. Irving, for the plaintiffs.  
 J. L. O'Flynn, for the defendants.

SUTHERLAND, J., in a written judgment, said that on the evening of the 18th July, 1916, the defendants (carriers) landed on the Government wharf at Thessalon, Ontario, a crated democrat-waggon, which they placed thereon at the point on the wharf and in the position indicated by the Government wharfinger. When so placed, it was leaning against the face of the warehouse on the wharf. The wharf was a resort for the people of the locality, and on the following day the plaintiffs, with their child, went upon the wharf for the purposes of rest and recreation. The boy and two other children were attracted to the waggon; they attempted to get upon it, whereupon it overturned and fell, injuring the boy so badly that he died a few days later.

The plaintiffs charged that the defendants were guilty of negligence in that they knew or ought to have known that there was a likelihood of injury resulting to children resorting to the wharf and playing at or upon a democrat thus crated and erected. They said that it was dangerous in itself from the state or position in which it was placed and constituted a danger to those using the wharf, and was in fact a nuisance.

The defendants denied any responsibility for the waggon after it was deposited on the wharf.

Questions were submitted to the jury at the trial. The first was, whether the defendants were guilty of any negligence which