

that security for costs be dispensed with. If, however, plaintiff is so advised, she may renew her application in Chambers, notwithstanding this judgment, but the costs of the present application and appeals must first be paid.

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BRITTON, J.

MAY 13TH, 1905.

TRIAL.

PLOUFFE v. IRON FURNACE CO.

*Negligence—Leaving Unguarded Hole in Ice Formed upon Navigable Water—Evidence of Negligence—Death of Person Walking over Ice—Cause of Death—Absence of Direct Proof — Contributory Negligence — Argumentative Finding of Jury—Interpretation of.*

Action by widow of Urgel Plouffe, on behalf of herself and children, under the Fatal Accidents Act, to recover damages for the death of her husband, alleged to have been occasioned by the negligence of defendants in leaving unguarded a hole made by them in the ice in Midland harbour in February, 1903.

A. E. H. Creswicke, Barrie, for plaintiff.

E. E. A. Du Vernet and W. A. Finlayson, Midland, for defendants.

BRITTON, J.:—Defendants are the owners of a large dock at Midland, lying along side of which in the winter of 1902-3 was their tug "Voyageur," which accidentally filled with water and sank at the dock, breaking the ice and leaving open water above her deck. The sunken boat was not immediately raised, and ice formed above it. In a short time, and at defendants' convenience, they cut the new ice recently formed, and proceeded with the work of raising the tug. Defendants did not place any brush or obstruction or sign near the open water or in any way mark the place of open water or give any warning of danger.

On the morning of 7th February, 1903, the body of deceased was found near this tug. He was lying upon his back, his feet and legs were upon solid ice, his head in open water. Some witnesses stated that the nose and mouth were not under water or covered by water. Other witnesses said