

so at their own risk. (3) That the men were guilty of contributory negligence in getting upon the bucket on the night of the accident, without first ringing the bell so as to make sure the engineer was in his place. The actions were tried at Rat Portage in July, 1901, and all the evidence taken, except that of Mr. Blue, Inspector of Mines, who had made a test of the machinery after the accident, and the Chief Justice desired to have Mr. Blue's evidence in order that he might ascertain exactly the result of the test. On the return of this evidence, argument was concluded.

N. W. Rowell and W. J. Moran, Rat Portage, for plaintiffs.

R. C. Clute, K.C., and A. C. Boyce, Rat Portage, for defendants.

FALCONBRIDGE, C.J., found the facts in favor of the plaintiffs, and that the accident occurred by reason of the defective machinery and plant in use in the mine, for which the defendants were responsible, and he found against the defendants on the issue of contributory negligence, and assessed the damages to the plaintiff Adams, the father of the deceased, who, at the time of his death, was between twenty and twenty-one years old, at \$750. Having regard to the fact that Mrs. Howe lived for about a year and a half after her husband's death, he assessed the damages in the Howe action at \$850, but held that he was bound by *McHugh v. G. T. R.*, 32 O. R. 234, 21 C. L. T. Occ. N. 581, to dismiss the Howe action, but assessed the damages in case that decision should be reversed by the Supreme Court, or in case it was desired to appeal.

Moran & Mackenzie, Rat Portage, solicitors for plaintiff.

Boyce & Draper, Rat Portage, solicitors for defendants.

JANUARY 13TH, 1902.

COURT OF APPEAL.

LUTON v. TOWNSHIP OF YARMOUTH.

Highway—Want of Repair—Knowledge of, by Corporation—Accident—Causa Causans—Finding of Fact by Trial Judge—Interference with, when Evidence Conflicting—Damages not Excessive.

Atkinson v. Chatham, 31 S. C. R. 61, distinguished.

Sherwood v. Hamilton, 37 U. C. R. 410, and Toms v. Whitby, U. C. R. 195, followed.

Lucas v. Moore, 43 U. C. R. 334, 3 A. R. 602 specially referred to.

Appeal by defendants, from judgment for \$1,750 of ROBERTSON, J., in action for damages for injuries sustained