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DOMINION OF CANADA.

SUPREME COURT.

DECEMBER 13TH, 1909.

AINSLIE MINING AND RY. CO. v. McDOUGALL.

*Negligence — Injury to Workman in Mine — Nova Scotia
Fatal Injuries Act—Action by Parents—Common Em-
ployment—Fellow-servant.*

Appeal from Supreme Court of Nova Scotia. Reported
4 E. L. R. 275.

*Present, GIROUARD, DAVIES, IDINGTON, DUFF and
ANGLIN, J.J.*

E. L. Newcombe, K.C., for appellant.

Daniel McNeill, K.C., for respondent.

DAVIES, J.:—This was an action under the "Fatal Injuries Act" of Nova Scotia, brought by the plaintiff on behalf of himself and his wife to recover damages for the death of their son, a young man who was killed in the defendants' mine while working as one of the defendants' employees.

The jury awarded as damages \$1,200, and divided it, giving to each \$600, father and mother.

The death of the employee was caused by a stone or rock of several tons' weight falling out of the hanging wall of the mine upon the deceased workman, just after work had been resumed in the mine after it had remained unworked for some 18 months.

The jury found that the negligence of the defendants, which caused the death of their workman, consisted in "not having the overhanging wall cased and protected from