5. If so, in what did such negligence consist? A. In not locking their tool-box.

6. If the defendants did not exercise reasonable care, did such negligence cause or contribute to the accident? A. Yes.

7. Was the infant plaintiff guilty of any negligence which caused or contributed to the accident? A. No.

The main issue in the case was, whether the infant plaintiff had obtained the explosive from the defendants' tool-box. On the one side was the direct and positive affirmative statement of the boy and his elder brother; against that, the strong statement of the defendant workmen that there was no explosive in the box. It was peculiarly a case for the jury, and they had seen fit to accept the story of the boys, as they had a perfect right to do.

When the jury brought in their findings, counsel for the defendants urged that upon the answers to questions 2(*a*) and 2(*b*) they were entitled to judgment, on the ground that the defendants would be liable only in case there was actual knowledge on their part. In the opinion of the learned Justice of Appeal, the jury having found that the explosive was in the defendants' box, the onus was on the defendatns to shew that it had come there in some way for which they were not responsible, and this they had wholly failed to do.

The appeal should be dismissed.

MAGEE and FERGUSON, JJ.A., agreed with MACLAREN, J.A.

HODGINS, J.A., read a dissenting judgment. He was of opinion that the verdict was an unsatisfactory one, and that the defendants were entitled to a new trial.

Appeal dismissed; HODGINS, J.A., *dissenting.*

FIRST DIVISIONAL COURT. JUNE 14TH, 1918.

NEW ONTARIO TIMBER CO. v. McDONALD.

Contract—Sale of Pulpwood—Breach by Vendor—Action by Purchaser for Damages—Defence—Repudiation of Contract because of Misrepresentations—Failure of Purchaser to Shew Damage—Relief of Purchaser from Loss by Transaction with Stranger.

An appeal by the plaintiff from the judgment of the Judge of the District Court of the District of Algoma dismissing the action without costs.