

The action was tried with a jury at Napanee.

E. G. Porter, K.C., for the plaintiff.

W. S. Herrington, K.C., for the defendants.

FALCONBRIDGE, C.J.K.B.:—The defendants were authorised by the statute 29 & 30 Vict. (1866) ch. 84, and amending Acts, to construct and maintain dams and reservoirs for the purpose of improving and increasing the supply of water in the Napanee river; and they erected, amongst others, a dam at Fifth Deep Eau Lake, in the county of Frontenac, which dam penned back water on the said lake for some feet.

It was proved at the trial, and it was manifest from the demeanour of some of the witnesses, that there was a good deal of ill-feeling in the neighbourhood against the company, arising, one witness said, from unsanitary conditions said to have been produced by flooding land which would have been naturally dry. Their original dam went out in 1908; and three years ago the south end of a new structure went out, under circumstances which made it reasonably clear that dynamite or some other high explosive had been maliciously used for the purpose. The defendants offered \$500 reward, but no one was apprehended, and the hole was repaired. On the 16th April last it gave way again, as the evidence shews, and as the jury have found, as the result of an explosive. On this last occasion, a large quantity of water was released, and the stream below the said dam became much swollen. About a quarter of a mile down the river there is a bridge, known as McCumber's, forming part of a travelled public highway in the township of Hinchinbrooke. The water overflowed part of the highway and approaches to the said bridge. The plaintiff's son, George Hudson, attempted to cross the bridge and approach, and was carried away by the force of the water and was drowned.

The plaintiff now brings her action, as mother and administratrix of the said George Hudson, claiming that his death was caused by the neglect and carelessness of the said defendants: (1) in erecting and maintaining an improperly constructed and insecure dam; (2) in not taking proper precautions to prevent the said dam from breaking; (3) and, the said dam having broken, in not taking precautions to repair and make safe the highway at places where the stream crossed it.

The evidence completely failed to establish any of these allegations. The dam was properly constructed; and the jury, by finding that the negligence of the defendants consisted "by