

Action by Edna Isabella Fairweather, widow of Henry Ivon Fairweather, to recover \$10,000 damages for the death by drowning of her husband, foreman in charge of the defendants' Nassau power-house, on the Otonabee river, while cutting away the ice and débris on and over the apron of the sluiceway, by reason, as the plaintiff alleged, of the negligence and carelessness of the defendants.

The action was tried by HODGINS, J.A., without a jury, at Peterborough and Toronto.

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

G. H. Watson, K.C., and L. M. Hayes, K.C., for the defendants.

HODGINS, J.A.:—The facts in this case on which liability must be determined are somewhat complex. The plaintiff's husband . . . had gone out on the ice which had formed on and over the apron of a sluiceway, for carrying off water, ice, and débris, leading through the wing-dam from the forebay, and discharging into the Otonabee river. When about four or six feet from the outer end, and while cutting away the ice with a short axe so as to clear the apron, he fell into the river, and, notwithstanding the efforts of his companion, Bert Lockington, to reach him with his ice axe, he was carried around by a swift eddy and under the ice near the dam, and drowned. . . .

The river water is admitted through the two westerly openings of the dam into the forebay; and, in order to keep the rack clear of débris, anchor ice, and other obstructions, this sluiceway is used, and is left open when anchor ice is present. . . . The importance of keeping the rack clear and allowing the free transit of water through the flume to the wheels is admitted. In fact it is absolutely necessary.

There was a letter put in evidence (exhibit 12), from the superintendent of the Peterborough works to the deceased, dated six days before his death, delivered to him by Cotton on the same day, which shews the importance attached to uninterrupted operation of the power plant: "Peterborough, Jan. 8th, 1912. Mr. Fairweather: This will be handed to you by Mr. Cotton. I have sent him out to see you, to give you the results of his experience in running the power-house, which he did for a good many years, very satisfactorily indeed. I am frank to say that your operation of the power-house has been fairly satisfactory until the cold weather came, and since then it has been at times quite unsatisfactory. I hope Mr. Cotton will be able to give you