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No. 10

APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

MAY 17TH, 1918.

*CLEMENT v. NORTHERN NAVIGATION CO. LIMITED.

Negligence—Carriers—Waggon Delivered on Government Wharf and Left in Dangerous Position—Direction of Wharfinger—Injury to Child by Overturning of Waggon—Death of Child—Responsibility of Carriers—Nuisance—Action by Parents under Fatal Accidents Act—Damages.

Appeal by the plaintiff from the judgment of SUTHERLAND, J., 13 O.W.N. 22, dismissing an action, brought under the Fatal Accidents Act, to recover damages for the death of the plaintiffs' infant son, aged 6 years.

The appeal was heard by MACLAREN, MAGEE, HODGINS, and FERGUSON, J.J.A.

J. E. Irving, for the appellants.

R. I. Towers, for the defendants, respondents.

MACLAREN, J.A., reading the judgment of the Court, said that the action was based both on negligence and nuisance. The defendants received at Owen Sound, for carriage to Thessalon, a crated democrat-waggon, weighing more than 800 lbs. They landed it on the Government wharf at Thessalon, about midnight on the 17th September, 1916. The mate of the defendants' steamer which carried the waggon had charge of the men who unloaded it, and he asked the wharfinger where they should place it. The wharfinger directed that it should be deposited

* This case and all others so marked to be reported in the Ontario Law Reports.