

The result is, that the plaintiff cannot enforce the contract he sets up and insists upon; and, never having been willing to carry it out according to the defendants' view of it, has no claim upon them in respect of it.

The appeal should be allowed and the action dismissed.

LENNOX, J., concurred in the judgment of the Chief Justice.

RIDDELL, J., agreed in the result, for reasons stated in writing.

ROSE, J., also agreed in the result.

Appeal allowed.

SECOND DIVISIONAL COURT.

NOVEMBER 23RD, 1917.

*DURANT v. ONTARIO AND MINNESOTA POWER CO.

Negligence—Injury to and Death of Person Caused by Fall of Frozen Surface in Gravel-pit—Servant of Teamster—Contract of Teamster with Defendants—Undertaking to Remove Surface—Dangerous Place—Knowledge of Danger—Duty Owed by Defendants—Breach—Cause of Death—Direction of Person in Charge—Negligence of Deceased—Evidence—Contributory Negligence—Action under Fatal Accidents Act—Damages—Reasonable Expectation of Pecuniary Benefit—Parents of Deceased.

Appeal by the defendants from the judgment of KELLY, J., 12 O.W.N. 394.

The appeal was heard by MEREDITH, C.J.C.P., LENNOX, J., FERGUSON, J.A., and ROSE, J.

E. G. McMillan, for the appellants.

H. H. Dewart, K.C., for the plaintiff, respondent.

MEREDITH, C.J.C.P., in a written judgment, said that the plaintiff's son was killed while working as a teamster, loading gravel in a gravel-pit. The gravel was under a cover of frozen earth and snow, which had not been sufficiently removed, in consequence of which the men, in loading their waggons, were obliged to work in a stooping position, under, or partly under, an overhanging surface of such earth and snow, a part of which fell on the plaintiff's son and killed him. The gravel was being taken out by the defendants by the teamsters at so much for each