

29 O.R. 542; Johnson v. Brown (1909), 13 O.W.R. 1212; Re Rutherford (1915), 34 O.L.R. 395; Mather v. Fidler (1916), 10 O.W.N. 229; McGugan v. Smith (1892), 21 S.C.R. 263; Murdoch v. West (1895), 24 S.C.R. 305.

The Statute of Limitations (pleaded by the defendants) applied, and the remuneration should be limited to six years.

Judgment for the plaintiff for \$2,460 with costs.

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BRITTON, J.

MAY 31ST, 1917.

SIMPSON v. LOCAL BOARD OF HEALTH OF BELLEVILLE.

*Negligence—Local Board of Health—Medical Officer of Health—Death of Diphtheria Patient—Action under Fatal Accidents Act—Evidence—Failure to Shew Negligence Causing or Contributing to Death—Dismissal of Action—Costs.*

Action under the Fatal Accidents Act by the parents of Martha Simpson, a child of seven years, to recover damages for her death by reason (as alleged) of the negligence of the defendants, the Local Board of Health and the Medical Officer of Health.

The action was tried with a jury at Belleville.

W. C. Mikel, K.C., for the plaintiffs.

S. Masson, K.C., for the defendants.

BRITTON, J., in a written judgment, said that the child was taken ill on the 26th January, 1916, with a disease that proved to be diphtheria, from which she died on the 2nd February, 1916, after having been isolated and attended to by a health officer employed by the Local Board and the defendant Yeomans, the Medical Officer of Health. All the medical testimony was to the effect that it could not be said that death resulted from anything alleged to have been done or omitted by the defendants or either of them. At the close of the plaintiffs' case, the defendants' counsel moved for the dismissal of the action, on the ground that the death was not shewn to have been caused by the negligence alleged. Judgment was reserved upon this motion, the defendants called witnesses, and questions were submitted to the jury. The jury found: (1) that the Local Board were guilty of negligence which caused the death; (2) that the negligence was, "lack of proper medical attention and nursing and food and fuel;" (3)