gravel was; he proceeded to load; while he was engaged in loading, the upper crust gave way, and a heavy chunk fell upon him and so injured him as to cause his death. He was not warned of any danger.

The deceased was not a person employed by the defendants. He was employed by Truax, and was exclusively under his control and entirely beyond the control of the defendants, who neither engaged him, paid him, nor had any power to direct his operations or dismiss him. The case did not come under the Workmen's Compensation Act, 4 Geo. V. ch. 25 (O.)

The defendants, when they employed a man to keep the pit clean for those hauling gravel—that operation including the care and removal of the frozen upper crust, which was an element of danger to those working in the pit—assumed, even if they did not in the beginning have, the control over the very part of the operation of the gravel-pit in which, and owing to the condition of which, Durant met his death. In the course of that operation and from the blasting on the evening of the 18th January, and from the failure to remove all the portion that was loosened by the blasting, there was introduced an element of danger to those working in the pit—a veritable trap, especially to those who, like Durant, knew not of the danger and were not warned. It was McKelvie, the person whom the defendants employed to take charge of the clearing of the pit, who pointed out to Durant where the gravel was to be obtained—the very spot where he was caught by the falling mass. This combination of circumstances constituted negligence on the part of the defendants.

Contributory negligence was alleged, but was not supported by the evidence.

The parents of the deceased had a reasonable expectation of pecuniary benefit from the prolongation of their son's life.

Money paid by the plaintiff for the funeral expenses of the deceased could not be taken into account in estimating the damages either at common law or under the Fatal Accidents Act, Clark v. London General Omnibus Co., [1906] 2 K.B. 648; Toronto R.W. Co. v. Mulvaney (1907), 38 S.C.R. 327.

Brothers and sisters of the deceased are amongst the persons for whose benefit an action may be brought under the Fatal Accidents Act.

The damages should be assessed at $1,400, $700 to the plaintiff and $700 to the mother.

Judgment accordingly with costs.