

increased by reason of the adjournments and amendments; and the form of the judgment should be such as to protect the defendants the Livingstons, and allow them to take proceedings, if so advised, to establish a prior will.

FIRST DIVISIONAL COURT.

JUNE 14TH, 1918.

*GERARD v. OTTAWA GAS CO.

*Negligence—Explosive Left by Workman in Street and Found by Boy
—Injury to Boy—Negligence—Findings of Jury—Conflicting
Evidence—Onus—Appeal.*

An appeal by the defendants from the judgment of MULOCK, C.J.Ex., at the trial, upon the findings of the jury, in favour of the plaintiffs.

The action was brought by John Gerard, a boy of 9 years of age, by his father as next friend and as a plaintiff in his own right, to recover damages arising from an injury to the boy from an explosive said to have been negligently left in a tool-box on wheels, by the defendants' servants, on a side-street in the city of Ottawa, where they were digging a trench for the laying down of gas-pipes.

The jury awarded the boy \$700 damages and his father \$100, and judgment was given in their favour for these sums, with costs.

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

G. F. Henderson, K.C., for the appellants.

A. E. Fripp, K.C., for the plaintiffs, respondents.

MACLAREN, J.A., in a written judgment, set out the facts and gave the questions submitted to the jury and their answers, which were as follows:—

1. Where did the infant plaintiff obtain the explosive which injured him? A. In the Ottawa Gas Company's tool-box.

2. (a) If from the defendants' tool-box, did the defendants know it was there? A. May not have known.

(b) Ought they, by the exercise of reasonable care, to have known that it was there? A. Yes.

3. Was the explosive in the possession of the defendants when the infant plaintiff obtained possession of it? A. Yes.

4. Were the defendants guilty of any negligence in the care of the explosive? A. Yes.