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NO. 9

HON. MR. JUSTICE MIDDLETON.

APRIL 8TH, 1913.

LUCIANI v. TORONTO CONSTRUCTION CO., LTD.

4 O. W. N. 1073.

Negligence — Fatal Accidents Act — Right of those Entitled to Sue under to Appoint Attorney to Sue for them — Action by Infant by Next Friend—Action Brought in Own Right — Letters of Administration—Refusal of Stay to Obtain — Statutory Limitation—Dismissal of Action.

MIDDLETON, J. *held*, that an infant has no right to bring an action by a next friend as attorney or assignee of another.

That those entitled under the Fatal Accidents Act to bring an action must bring it themselves; they cannot clothe others with the right to bring action.

That where an infant brings suit in his own name and after the expiration of the statutory limitation applies to have the action stayed in order that he may obtain letters of administration, the Court should not grant such leave as it would have the effect of depriving defendants of the benefits of such limitation.

Dini v. Farquhar, 8 O. L. R., considered.

Motion by the defendants for an order under Consolidated Rule 261, dismissing the action upon the ground that on the statement of claim the action appears to be unfounded and vexatious.

The plaintiff, an infant suing by his next friend, alleged that he sues on behalf of his father and mother for damages by reason of the death of his brother, a labourer said to have been killed by an explosion of dynamite—which he was thawing—owing to negligence and an improper and defective system in use by the company.

J. Grayson Smith, for the defendant.

D. C. Ross, for the plaintiff.

HON. MR. JUSTICE MIDDLETON:—The accident was alleged to have taken place on the 3rd of December, 1911. The writ was not issued until shortly before the expiry of