but the action of the boys in entering the ice-field, knowing what it was, and that it was dangerous to skate upon the ice within the enclosure, especially if they heard the warning.

Reference to Shilson v. Northern Ontario Light and Power Co. Limited (1919), 45 O.L.R. 449, 454.

Considering the case as affected by sec. 287 (*a*) of the Code, and assuming that a person who sustains injury because the duty imposed by the statute is not performed may recover, though at common law he could not, it is not open to question that the mere failure to perform the duty and the fact that an accident has happened is not enough; it must be shewn that the failure was the effective cause of the accident; and that was not proved in this case.

It was unnecessary to decide whether the view of the trial Judge was the correct view of the meaning of the section. As at present advised, the learned Chief Justice thought it was not, and, if necessary for the decision, would hold that where an ice-field is set apart and the field enclosed as the section requires, it is not necessary to enclose the openings that are made within the limits of the field. The purpose of the statute was not to safeguard one who, disregarding the warning that the fencing of the field would convey to him, takes upon himself the risk of entering the field.

The liability of a person engaged in harvesting ice to answer in damages to one who suffers injury by falling into an opening made in the ice or breaking through thin ice that has formed over an opening, where the fence is not of the character which the statute requires, necessarily depends upon the circumstances in which the accident happened. One seeing the fence and knowing that ice-cutting is going on inside must know that the fence is there to warn him that he ought not to enter; and, if he chooses to disregard the warning, his recklessness is the effective cause of any accident which befalls him.

The appeal should be allowed and the action dismissed, both with costs.

eal allowed.