

KELLY, J.

AUGUST 1ST, 1917.

DURANT v. MINNESOTA AND ONTARIO POWER CO.

Negligence—Injury to and Death of Person by Falling of Crust in Gravel-pit—Dangerous Place—Trap—Knowledge of Danger—Direction of Person in Charge—Contributory Negligence—Action under Fatal Accidents Act—Damages—Funeral Expenses—Reasonable Expectation of Pecuniary Benefit—Parents of Deceased—Brothers and Sisters—Workmen's Compensation Act.

Action under the Fatal Accidents Act, R.S.O. 1914 ch. 151, to recover damages for the death of Dewey Durant by reason of the negligence of the defendants, as the plaintiff alleged. The plaintiff (the father of the deceased) sued on his own behalf and on the behalf of the mother and brothers and sisters of the deceased.

The action was tried without a jury at Fort Frances.

C. R. Fitch, for the plaintiff.

A. G. Murray, for the defendants.

KELLY, J., in a written judgment, said that Dewey Durant was employed by Louis Truax in driving a team of horses. On the 19th January, 1917, Truax sent Durant with the team to draw gravel from a pit to the defendants' premises for the defendants, for which the defendants were paying Truax at a rate per cubic yard. Others were drawing gravel from the pit for the defendants, on similar terms. Sometimes it was necessary for the teamsters who loaded their own sleighs to undermine and take the gravel from beneath the frozen upper crust; and at times dynamite was used to break down the crust. On the 19th January, one McKelvie, employed by the defendants, was in charge of the pit; his duty was to keep the pit in condition, including keeping the crust broken off, and to this end he used dynamite. On the evening of the 18th January, he drilled three holes on the upper surface of the frozen crust and one on the under side, put a charge in each of the upper holes, but not in the underneath hole; and, after the discharge, he broke the crust as far back as these holes. Then he ceased work for the night.

Durant had hauled sand from another place in the same pit at an earlier date. On arriving at the pit on the morning of the 19th January, he inquired of McKelvie and was shewn where the