

The defendants the mining parties should account for the net profits made for all gas obtained from this lot, and the Canada Company for all royalties from this source.

Success being divided, instead of an apportionment of costs, it is simpler to follow the usual plan of giving no costs to either side.

I have referred to the American cases cited and . . . to many others arising in the oil-producing States. Those from which I have derived most assistance are decisions very much in line with the method pursued in the Budhill case, viz.: Dunham v. Kirkpatrick, 110 Pa. St. 36; . . . Silver v. Bush, 213 Pa. St. 195; . . . McKinney v. Central, etc., Co., 134 Ky. 339; . . . Deer Lake Co. v. Michigan Gas Co., 89 Mich. 180; also Westmoreland Gas Co. v. Drewitt, 130 Pa. St. 235; Burton v. Forest Oil Co., 54 Atl. R. 267; Ohio Oil Co. v. Indiana, 177 U. S. 190; Wagner v. Malloy, 169 N. Y. 501. The case of . . . Murray v. Alldred, 10 Tenn. 100, is opposed to the weight of authority following Dunham v. Kirkpatrick.

DUNSMOOR v. NATIONAL PORTLAND CEMENT CO.—FALCONBRIDGE,
C.J.K.B.—Nov. 19.

Railway—Injury to and Death of Person Crossing Track—Negligence—Evidence—Nonsuit—Findings of Jury—Liability of two Defendants.—An action by the widow of John Colin Dunsmoor, late of the town of Durham, in the county of Grey, against the National Portland Cement Company and the Canadian Pacific Railway Company, to recover damages for the death of Dunsmoor by being run down by a locomotive engine which belonged to and was being operated by the cement company, on the line of the railway company, at a highway-crossing in the township of Bentinck. The Chief Justice said that, on the evidence adduced by the plaintiff, effect should not be given to the defendants' motion for a nonsuit; and, on the answers of the jury, the plaintiff was entitled to judgment against both defendants. I. B. Lucas, K.C., and Wallace, for the plaintiff. A. G. MacKay, K.C., for the cement company. Angus MacMurchy, K.C., for the railway company.