

MASTER IN CHAMBERS.

APRIL 1ST, 1913.

LUCIANI v. TORONTO CONSTRUCTION CO.

4 O. W. N. 1025.

Negligence—Fatal Accidents Act—Right of Attorney of Parents to Sue—Infant—Power to Act as Attorney—Con. Rules, 259, 261, 298—Amendment—Limitation of Action—Reference to Judge in Court.

MASTER IN CHAMBERS, *held*, that an infant could take a power of attorney, but that an action under the Fatal Accidents Act must be brought in the name of the parents, and that their attorney could not sue for the death.

Re Wallace, 14 Q. B. D. 22, distinguished.

Motion by defendants to set aside the statement of claim and to dismiss the action or staying all further proceedings or for an order for security for costs.

J. Grayson Smith, for the motion.

D. C. Ross, for the plaintiff, *contra*.

CARTWRIGHT, K.C., MASTER:—The plaintiff is an infant suing by his next friend for damages for the death of his brother. The statement of claim alleges that he sues on behalf of the parents of his deceased brother, who was killed on 3rd December, 1911, while working for the defendant company. The writ was issued on 22nd November, 1912.

The parents of the deceased reside in Italy. The action is brought under a power of attorney from them to the plaintiff, dated 2nd November, 1912. This authorizes him as follows: "for us and in our behalf and for our use and benefit to sue the said (T. C. Co. Ltd) for damages—the said action to be brought in the name of our said attorney but for our benefit" and he is empowered to give discharges for anything paid in compromise of their claim and to make any settlement as he may think fit.

At the same time the parents executed an absolute assignment of their claim. But this is not mentioned in the statement of claim—no doubt because of the decision in *McCormack v. Toronto Railway*, 13 O. L. R. 656—which would be applicable unless both assignor and assignee are parties as in *Powley v. Mickleborough*, 21 O. L. R. 556.

It was argued in support of the motion that an infant could not take a power of attorney. But the contrary is