

time of the accident which resulted in his death. The alleged negligence consisted of the absence of air brakes and bell signal cord from the equipment of the train. The statement of claim was demurred to on various grounds.

*Held*, 1. No person can sue under the Workmen's Compensation for Injuries Act, R. S. M. 1902, c. 178, for damages for the death of a deceased relative, who could not sue under c. 31, R. S. M. 1902, which takes the place of Lord Campbell's Act, and the statement of claim must show, either that the plaintiff is the executor or the administrator of the deceased, or that there is no executor or administrator, or, if there be one, that no action has been commenced within six months after the death of the deceased by or in the name of the executor or administrator; and it was not sufficient for plaintiff to state simply that he was the father and sole heir at law of the deceased. *Lampman v. Gainsborough*, 17 O. R. 191, and *Mummery et ux. v. G. T. R.* 1 O. L. R. 622, followed.

2. It is necessary that the statement of claim should shew that the plaintiff had a reasonable prospect of future pecuniary benefit from the continuance of the life of the deceased: *Davidson v. Stuart*, 14 M. R. 74. *Chapman v. Rothwell*, 27 L. J. N. S. Q. B. 315, not followed. When the failure to prove a fact will cause the action to fail, that fact is a material one upon which the plaintiff relies, and, under rule 306 of the King's Bench Act, R. S. M. 1902, c. 40, should be set out in the statement of claim.

3. Under the circumstances appearing in this case it was not necessary that the action should be shewn to be brought for the benefit of all persons entitled to claim damages.

4. Although the Railway Act in force at the time of the accident required only passenger trains to be equipped with bell signal cord and air brakes, it is still a question of evidence whether the absence of those appliances on freight trains is negligence for the purposes of such an action, that is whether they may be reasonably required or could be reasonably furnished for the protection of the train hands, and the statement of claim was not demurrable because it relied on that absence as constituting negligence.

5. The statement of claim should allege that the defendants were aware of the defects relied on as constituting negligence or should have known of them: *Griffiths v. London and St. Katharines Dock Co.*, 12 Q. B. D. 493, 13 Q. B. D. 259. *PERDUE, J.*, dissented from the decision on this point.

6. It is not necessary to allege that the deceased was ignorant of the existence of the alleged defects. Though such an allegation was held necessary in the *Griffiths* case, that case has been reversed on this point in the subsequent cases of *Smith v. Baker* (1899) 2 Q. B. 338, and *Williams v. Birmingham* (1899) 2 Q. B. 338. Mere knowledge on the workman's part is not in itself a bar to the action. It would have to