

value of the land. If the improvements did not add to the value of the land, no compensation would be payable.

The judgment of the trial Judge should be set aside, and there should be substituted for it a judgment referring it to the Master at Windsor to ascertain and report as to the lasting improvements made by the respondent on the lands in question and as to the amount by which the value of the lands had been enhanced by such improvements, and reserving further directions and the question of costs of the action and appeal until after report.

The order made at the trial adding three of the plaintiffs as plaintiffs in their capacity of executors of the will of Luc Montreuil could not stand, having been made without their consent. There was no need for making them parties.

MACLAREN and MAGEE, JJ.A., agreed with MEREDITH, C.J.O.

HODGINS, J.A., was of opinion that the appeal should be allowed in toto.

Judgment as stated by the Chief Justice.

FIRST DIVISIONAL COURT.

MARCH 19TH, 1920.

*CASTALDI v. DENISON.

Ice—Harvesting Ice Formed on Navigable Water—Protection of Public—Duty to Guard Opening in Ice—Negligence at Common Law—Breach of Statutory Duty—Criminal Code, sec. 287 (a)—Ice-field Fenced and Guarded—Duty to Guard Dangerous Place within Enclosure—Boys Entering Field in Spite of Warning and Falling through Thin Ice—Action against Person who Made Opening—Effective Cause of Accident—Failure to Shew.

Appeal by the defendant from the judgment of CLUTE, J., at the trial, in favour of the plaintiff, for the recovery of \$500 damages, in an action under the Fatal Accidents Act, brought by the mother of two boys who, while skating upon the Napanee river, broke through thin ice formed over a hole said to have been cut by the defendant and left unguarded, and were drowned.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and FERGUSON, JJ.A.

D. L. McCarthy, K.C., and J. E. Madden, for the appellant.

W. S. Herrington, K.C., for the plaintiff, respondent.