force in 1893 or subsequently relating to the repair of sidewalks, etc., are not applicable to the city of Calgary, although not expressly declared inapplicable by the special ordinance incorporating the city which was passed in that year.—Although a duty to repair streets may be expressly imposed upon a municipality, no action lies against it for damages for injuries resulting from non-repair. *Clark* v. *City of Calgary*. (Court en banc, 1907), p. 309.

NEGLIGENCE.

1. **The Ordinance Respecting Compensation to the Families of Persons Killed by Accident (C. O. 1898, c. 48)** *The Coal Mines Regulations Ordinance (C. O. 1898, c. 16)—The Workman's Compensation Ordinance (1900, c. 13)—Negligence—Liability for Non-performance of Statutory Duty—Contributory Negligence of Fellow Workmen or of Mere Strangers—Marriage, Evidence of.*]—Action brought by administratrix of Prosper Daye, killed in explosion in defendants' mine, under C. O. 1898, c. 48. There was evidence of plaintiff's that she was married to Daye in Belgium, was living with him to time of death, and that he was the father of her children, oldest aged 17 years; that he was killed by explosion of gas in defendants' Canmore mine in June, 1900; that ventilation was defective and not as required by s. 39, rule 1 of C. O. 1898, c. 16; that mine was not inspected as required by rule 3 of last cited section; that the mine was gaseous; that on the morning of the accident there was gas present in explosive quantities for two or three hours prior to the explosion; that the manager knew of the presence of gas; that two fellow workmen of deceased had opened their safety lamps; there was no evidence to rebut presumption of marriage, and no evidence of inspection of the lamps as required by rule 8 of s. 39 above, or that the explosion arose from any act or default of deceased:—*Held*, per McGuire, C.J., trial Judge). (1) That the oral evidence of the widow was sufficient proof of marriage according to the general rule that cohabitation and reputation is sufficient evidence of marriage, though in cases of bigamy, divorce and petitions for damages for adultery, stricter proof is required. (2) That, having found the effective and proximate cause of death to be an explosion due to the fault and negligence of the defendants and their breach of duty imposed by the Ordinances C. O. 1898, c. 16, they were not relieved if there was contributory negligence on the part of a fellow workman of accused or of a mere stranger. (3) That by reason of Ord. c. 13 of 1900, if negligence was proved there was no reason to enquire whether it was that of a fellow workman.—On appeal to the Court en banc.—*Held*, (1) that marriage was sufficiently established by Mrs. Daye's evidence; that strict proof was not required; that the fact that the alleged marriage in a foreign country did not affect the question, as the *lex fori* governs questions of proof.—(2) That there was sufficient evidence to support the findings of the trial Judge; that the findings were sufficient to render the defendants liable. Appeal dismissed with costs. *Daye* v. *H. W. McNeill Co.* (McGuire, C.J., 1902): (Court en banc, 1904), p. 23.

See ANIMALS, 2—MUNICIPAL LAW, 2—RAILWAY, 2—TRESPASS TO THE PERSON, 1.

NEXT FRIEND.

See PRACTICE, 5.

NULLITY.

See PRACTICE, 1, 3, 5.

PARTIES.

1. **Libel**—*Improper Joinder of Parties—Separate Causes of Action—Right of Plaintiff to Elect.*]—Where it appears in the course of the trial that two or more defendants have been joined in an action for two separate torts, one of which has been committed by both, but the other only by one, the plaintiff should be allowed to elect upon which cause of action he will proceed and the necessary amendments as to parties made accordingly. *Nyblett* v. *Williams*. (Court en banc, 1905), p. 200.

See LANDLORD AND TENANT, 2.