

year beginning May 1, 1907, and that the by-law was therefore ultra vires and should be quashed.

*Fullerton, K.C., and Muckelcan, for appellants, the city of Toronto. W. T. J. O'Connor, for respondent.*

Riddell, J.—Trial.]

[June 8.

BALLENTINE v. ONTARIO PIPE LINE CO.

*Negligence—Injury to property by gas explosion—Independent contractor—Statutory powers.*

The plaintiff was a grocer in the city of Hamilton and the owner of the premises, the southerly portion of which he occupied, the northerly portion being occupied by one Gordon. The defendants were an incorporated company and had obtained from the city the right by by-law to enter upon the streets, to dig trenches and lay and operate pipes for the supply of natural gas. The defendants made a contract with one Byrnes, a competent, independent contractor, for the necessary service connected with the main lines for the purpose of supplying customers with natural gas. Whilst this contract was in force and a short time prior to the accident the plaintiff's tenant, Gordon, requested the defendants to make the necessary connection between him and the main line of pipes, which were laid in front of the premises for the purpose of supplying Gordon with natural gas to his premises. The defendants notified Byrnes to have the service made in accordance with the contract existing between them. It was admitted on the statement of facts as agreed to that the employees of Byrnes negligently allowed gas to escape while constructing the trenches and thus finding its way into the cellar occupied by Gordon became ignited with the light therein, causing an explosion and injury to plaintiff's property. The plaintiff contended that the defendants are liable, (1) because they were exercising statutory powers under R.S.O. 1897, c. 191, ss. 22 and 27; (2) because they committed a nuisance in allowing the gas to escape. The defendants claimed that they were not liable as they employed a competent, independent contractor to do the work, and that he, if anybody, was liable.

*Held*, that this was not the case of a nuisance nor was the negligence collateral. It was the duty of the defendants in dig-