

Armour, C.J., Falconbridge, J., Street, J.]

[Feb. 17.

SMITH v. SMITH.

*Parent and child—Farm agreement—Maintenance of parents—Consideration—Definite contract—Evidence—Change of parent's intention.*

When a child seeks to enforce an agreement that if he remains with a parent, and works the farm and provides for his declining years, the parent will bestow the farm on him, courts will require that the agreement be established by the clearest evidence, and a certain and definite contract for a valuable consideration proved, or the parent will be entitled to change his views and the disposition of the property, in case of his own altered circumstances or want of filial conduct on the part of the child. Judgment of ROSE, J., reversed.

G. W. Wells, Q.C., for appeal. Riddell and W. E. Kelly, contra.

Divisional Court.]

SAUNDERS v. CITY OF TORONTO.

[March 1.

*Municipal corporations—Carters employed to remove street sweepings—Master and servant—Negligence—Liability.*

In an action brought against a city for injuries sustained by the plaintiff by being run down, while riding a bicycle along one of the streets, by a licensed carter employed in removing to a dumping ground street sweepings which were placed in piles on the side of the street. He owned the horse and cart he was driving, but was hired by the department having charge of this work, and received his orders from their foreman, which were, where to get the stuff and where to dump it, and to go and return by the shortest route, and for failure to carry out his orders he was subject to dismissal. He worked all day, consisting of nine hours, and was paid 28 cents per hour. He had been occasionally hired in the spring and fall of the year, when this work required to be done, and had been at work off and on during this particular season, and for two weeks constantly prior to the accident happening. A city by-law was proved which provided that the committee which had charge of this work might provide such scavenger carts as they might deem necessary, each cart to be supplied with one horse and the necessary appurtenances, and controlled by one man, the man and cart to be under the charge of the officers of the department whose duty it was to see to the cleaning of the lanes and streets.

*Held*, that the relationship of master and servant existed between the city and the carter at the time the accident occurred, and a non-suit entered at the trial was set aside and a new trial directed.

Gask, for the plaintiff. Fullerton, Q.C., for defendants.

Meredith, C.J.]

MAGANN v. FERGUSON.

[March 8.

*Assignment for creditors—Liquidated claim—Double value of land—4 Geo. II., c. 28, s. 1—Right to rent.*

Damages against an overholding tenant under 4 Geo. II., c. 28, s. 1, at the rate of double the yearly value of the land, do not constitute a liquidated