

tions of the parties, or enlarge the liabilities of the surety, so as to operate as a discharge of the contractor's surety.

Where a person under bond for the performance of work waives any claim for an allowance arising out of the contract, his surety will be entitled, on the taking of the accounts, to credit for the amount voluntarily released.

Where a sub-contractor has completed his work and performed his contract with the assistance of advances made him by his head contractor, the latter cannot recover these advances from the surety of the sub-contractor who entered into a bond conditioned for the due performance of the work, such being beyond the conditions expressed in the bond; if, however, the head contractor had completed the work on his own account upon the sub-contractor's default and charged the cost thereof against the sub-contractor deducting from this amount the sums due under the contract, the surety would still be liable, provided notice as required by the contract had been duly given to the surety.

*Cadwell v. Campeau*, 3 D.L.R. 555, referred to.

*W. N. Tilley*, and *A. W. Ballantyne*, for plaintiffs. *R. McKay*, K.C., and *W. B. Milliken*, for defendants.

Wyse appeared in person.

Meredith, C.J.C.P.]

[March 26.

SCOTT v. GOVERNORS OF UNIVERSITY OF TORONTO.

(10 D.L.R. 154.)

*Workmen's Compensation Act—Negligence—When contributory negligence a defence—Degree of care—Master and servant—Employers' liability—Common employment—Common law—Change of rule by workmen's compensation enactments.*

In actions for damages for injuries under the Workmen's Compensation for Injuries Act, R.S.O. 1897, ch. 160, the plaintiff cannot be proved guilty of contributory negligence by proving only that he could have avoided the accident; it must be shewn that he could have avoided it by the exercise of such care as persons acting in the like capacity and under similar circumstances ordinarily would have exercised.

Although an employer is not liable at common law for injuries to an employee sustained by reason of the negligent act of a foreman, if the machinery supplied is proper and usual and