time before MACMAHON, J. The plaintiff obtained judgment against the corporation, and the appellant was held liable to indemnify the latter against plaintiff's judgment and costs. From the judgment in favour of plaintiff, defendants and third party appealed, contending that no actionable negligence had been proved against the corporation, and that the deceased had been guilty of contributory negligence. The third party also appealed generally from the judgment awarding indemnity to the defendants. The latter is the appeal now in question.

The appellant by deed contracted with defendants to perform all the excavation, filling, masonry, and brick work required in the erection and completion of the new St. Lawrence market in the city of Toronto. Excavations were made by the appellant, and into one of them, which had been negligently left uncovered, as found by the Court, the plaintiff's husband fell.

The appellant was required, by general condition 1 of his contract, to "properly protect his work during progress." By clause 13 it was provided that defendants should not in any manner be answerable for injury to any person or persons, either workmen or the public, " against all which injuries to persons or property the contractor will properly guard, and make good all damage which may arise or be occasioned by any cause connected with this contract or the work done by the contractor, and will indemnify and keep indemnified the corporation against the same until the completion of all the works." And by his bond the appellant was bound to indemnify the defendants against loss or damage by reason of the execution of the works.

An agreement was also made between one Macintosh and defendants for the performance of the carpenter and joiner work of the new market, by one of the general conditions of which it was provided that "the carpenter shall erect and maintain the hoarding of Front and West Market and Jarvis streets. . . . This hoarding shall be constructed according to the building by-laws and to the satisfaction of the architect." The architect, under the authority of another clause of the contract, thought proper to waive and dispense with the construction of the hoarding. Macintosh's contract was not referred to in or made a part of the appellant's contract, and there was no evidence that the appellant knew that he had agreed to erect a hoarding or that the defendants' architect had absolved them from doing so.

J. Bicknell, K.C., and J. W. Bain, for the appellant.

A. F. Lobb and W. C. Chisholm, for defendants.