

Ont.] *MACDOUGALL v. WATER COMMISSIONERS OF WINDSOR.* [May 13.
Municipal corporation—Water commissioners—Statutory body—Powers—Contract.

By 37 Vict., c. 79 (Ont.), the waterworks system of Windsor is placed under the management of a board of commissioners who are to collect the revenue, paying over to the city any surplus therefrom, and to initiate works for improving the system the city supplying the funds to pay for the same. The total expenditure not to exceed \$300,000, and not more than \$20,000 can be expended in any one year without a vote of the ratepayers.

Held, affirming the judgment of the Court of Appeal, 27 O.A.R. 566, that the board is merely the statutory agent of the city in carrying out the purposes of the Act. and a contract for work to be performed in connection with the waterworks, not authorized by by-law of the council, and incurring an expenditure which would exceed the statutory limit was not a binding contract.

Held, also, that if an action could have been brought on such contract the city corporation would have been a necessary party.

Quære. Would not the city corporation have been the only party liable to be sued? Appeal dismissed with costs.

Riddell, K.C., for appellants. *Aylesworth*, K.C., for respondents.

Province of Ontario.

HIGH COURT OF JUSTICE.

Master in Chambers.]

[Nov. 14, 1900.

MUMMERY v. GRAND TRUNK R.W. CO.

WHALLS v. GRAND TRUNK R.W. CO.

Action—Fatal Accident Act—Rights of administrator—Rights of relatives—Time limit—Stay of proceedings.

An unmarried man having come to his death by reason of injuries inflicted by the defendants, two actions were brought to recover damages occasioned by his death. The first in point of time was brought by the paternal grandfather and grandmother of the deceased, and the second by his mother, who had obtained letters of administration to his estate after the bringing of the first action. Upon a motion by the defendants to stay one or other of the actions,

Held, that, while the grandfather and grandmother could legally proceed with their action under R.S.O. 1897, c. 166, although brought within six months of the death, so long as there was no executor or administrator, yet an administratrix having been appointed and an action brought by her within the six months, she was entitled to proceed with it; and the first action was the one to be stayed.