

# The Ontario Weekly Notes

Vol. V.

TORONTO, OCTOBER 3, 1913.

No. 2

## APPELLATE DIVISION.

SEPTEMBER 22ND, 1913.

### \*DALLANTONIO v. McCORMICK.

*Master and Servant—Injury to Servant—Workmen's Compensation for Injuries Act—Negligence of Foreman of Works—Liability of Master—Liability of Master's Principal—Railway Company—Construction Contract—Retention of Control—Liability for Negligence—Statutory Liability—Common Law Liability.*

Appeal by both defendants, the Canadian Pacific Railway Company and McCormick, from the judgment of FALCONBRIDGE, C.J.K.B., 4 O.W.N. 547.

The appeal was heard by MULOCK, C.J.Ex., CLUTE, RIDDELL, SUTHERLAND, and LEITCH, JJ.

W. R. White, K.C., for the defendant company.

R. McKay, K.C., for the defendant McCormick.

R. R. McKessock, K.C., for the plaintiff.

CLUTE, J.:—The plaintiff was injured while working as a mucker in the employ of the defendant McCormick, who had a contract to construct a tunnel to divert a creek from passing under a trestle which the company desired to fill up. While the plaintiff was working on the approach to the mouth of the tunnel, a mass of rock fell upon his leg, crushing it and injuring it to such an extent that it had to be amputated.

It is not disputed that at the time of the injury the plaintiff was working under the instructions of the foreman in charge of the work. It is charged that the work was dangerous, and that the defendants knew of the danger, and did not take proper precautions to prevent the accident.

\*To be reported in the Ontario Law Reports.