

of the Court of Appeal, [1911] 2 K. B. 489. Hughes is, in my opinion, not entitled to rank on the assets for the \$1,200, and his appeal should be dismissed with costs.

The cross-appeal also fails. The \$800 which Hughes received was not the money of the company, but the money of Crosby. It reached Hughes in part payment of shares which Vanderberg had sold for Hughes to Crosby. Had Hughes received the whole \$2,000, and not merely part of it, the company would, in my opinion, have no right—whatever Crosby's right might be—to recover these moneys from Hughes. The company had parted with nothing in exchange for Crosby's money, and it has not, I think, in any way become subrogated to the rights which Crosby had or might have had if he had not elected the company as his debtor for the \$800 as well as for the \$1,200. No costs of the cross-appeal.

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HON. MR. JUSTICE MIDDLETON.

NOVEMBER 18TH, 1912.

TRIAL.

GATTO v. TORONTO.

4 O. W. N. 356.

*Municipal Corporations—Negligence—Leak into Baker's Ovens—  
Inspection by Health Department—Exaggeration of Damages—  
Statutory Defences.*

MIDDLETON, J., dismissed, with costs, plaintiff's action for alleged damages to his baking business by reason of a service pipe leakage into his ovens, and rendering it impossible for him to bake bread through the alleged negligence of defendants, as he considered the negligence had not been proven, and the damage grossly exaggerated.

Action tried at Toronto on the 7th and 8th of November, 1912, to recover damages for injury sustained by water leaking from a broken service pipe, and making an oven, constructed in an area under the sidewalk, wet, so that the plaintiff was unable to bake bread therein for a period of forty-two days.

W. E. Raney, K.C., for the plaintiff.

C. M. Colquhoun, for the defendant.

HON. MR. JUSTICE MIDDLETON:—On reflection I retain the opinion expressed at the trial, that the plaintiff's claim has little merit and is grossly exaggerated.