

To protect the workmen from stones and earth falling on them a scaffolding had been built about half way down by placing timbers across at intervals and covering them with poles with earth on top of the whole. Several tons of earth and rock fell from the top and crashed through the scaffolding, whereby M. was killed. In an action by his father against the company operating the mine, the jury found that the place for the men to work in was not safe.

Held, that the company had not fulfilled its primary obligation to provide a safe place for its workmen, and that the company itself being negligent the doctrine of common employment could not be invoked. Appeal dismissed with costs.

Newcombe, K.C., for appellant. *McNeill*, K.C., for respondent.

Province of Ontario.

COURT OF APPEAL.

Meredith, C.J.C.P., Teetzel, J., Riddell, J.] [Nov. 30, 1909.

HORRIGAN v. CITY OF PORT ARTHUR.

Municipal corporations—Contracts—Powers of council.

Appeal from judgment of CLUTE, J., on an application for an injunction restraining the defendants from exercising a contract with the Hydro-Electric Power Commission of Ontario.

Held, that when there is a statutory prerequisite to the taking of a vote in reference to a by-law whereon to found a contract to be made in pursuance of it, such by-law is invalid unless such prerequisite has been observed.

H. Cassels, K.C., for plaintiff. *Hellmuth*, K.C., for defendants.

Teetzel, J.]

[Dec. 3, 1909.

SASKATCHEWAN LAND & HOMESTEAD CO. v. LEADLEY.

Mortgage—Compound interest—Construction of covenant.

A covenant in a mortgage read as follows: "That interest in arrear and premiums of insurance or other sums of money paid by the mortgagees for the protection of this security, such as taxes, repairs, or other incumbrances, and all costs, charges and expenses connected therewith, including the costs of any abortive