at the cost of the company, municipality, or other owner thereof as the case may be," etc.

Held, GALT, J., dissenting, that the defendants were not liable for the injury sustained by plaintiff.

Barron (of Lindsay), for the plaintiff.

Osler, Q.C., for the defendants.

McQUAY v. EASTWOOD.

Surgeon — Malpractice — Evidence — Finding of jury—Circumstances.

In an action against the defendant, a surgeon, for malpractice, the jury, by one finding, found that the defendant was guilty of negligence in his treatment in not giving instructions to the nurse; and by another, in not seeing that his instructions were properly carried out.

Held, that these findings were clearly inconsistent; but their inconsistency would not entitle defendant to judgment in his favour dismissing the action; but, at most, to a new trial, if there was evidence that ought to be submitted to the jury on either branch of the findings; but *held*, that on the evidence the findings could not be supported, and judgment was entered for the defendant, dismissing the action.

Robertson, Q.C., for the plaintiff.

McEWAN v. DILLON.

Landlord and tenant — Breach of covenant — Damages, measure of.

Action by the plaintiff, the lessee, against the defendant, the lessor, for breach of the covenant contained in a lease to dig certain ditches, erect certain fences, and furnish materials for the repair of the house. At the trial the learned judge, in fixing the amount of the plaintiff's damages, held that the measure was the difference between the rentable value of the demised premises with the defendant's covenant performed and the improvements made, and their rateable value without such improvements.

On motion to the Divisional Court, the measure thus adopted was affirmed, CAMERON, C.J., dissenting.

The learned judge at the trial having also directed that if certain improvements were made the damages were to be reduced thereby, and on its being shown to the Divisional Court that these improvements had been made, the damages were accordingly reduced.

Musgrove, for the plaintiff.

Alan Cassels, for the defendant.

McLENNAN v. WINSTON ET AL.

Contract—Breach—Evidence.

The plaintiff set up a contract alleged to have been made between the plaintiff and defendants, whereby the plaintiff was to cut and lay down 25,000 railway ties, at twenty-four cents per tie, on the defendants' limit, and were to be delivered thereon: that after the making of the contract the plaintiff procured an outfit to enable him to carry out the said contract, and the plaintiff was put to loss of time in procuring same: that the defendant refused to carry out said contract, whereby the plaintiff sustained damage: that it was further agreed that the plaintiff should ship the outfit to Port Arthur to the care of R., and on arrival of same the plaintiff should report and receive instructions as to the means and way of forwarding the outfit to the defendant's limit, etc.; and that though plaintiff shipped the outfit, etc., the defendants refused and neglected to give the instructions, whereby the plaintiff was damnified.

Held, assuming that the contract, as alleged, was proved, the evidence showed that the breach was on the part of the plaintiff and not of the defendant, and therefore the action failed.

Schoff, for the plaintiff.

W. R. Meredith, Q.C., for the defendants.

LANDRY v. CORPORATION OF OTTAWA.

By-law—Application to quash—Single judge—Divisional Court.

An application to quash a by-law may and ought to be made to a single judge, and not to the Divisional Court, unless some good reason is shown why the latter should entertain it.

McCarthy, Q.C., and *Clement*, for the applicant.

Maclennan, Q.C., contra.