LEGAL NOTES.

[This department will appear in the third issue of every month. Should there be any particular case you wish reported we would be pleased to give it special attention, providing it is a case that will be of special interest to engineers or contractors.—Ed.]

CONSTRUCTION—COLLAPSE OF WALL.

Valiquette vs. Fraser & Co.—The defendants who were a lumber company carrying on operations in the Province of Quebec undertook to erect an engine house on the bank of a lake and in connection with one of their mills. The plaintiff was wife of a boilermaker employed by them and brings action for death of her husband. The company got plans from another company operating near by and used these with slight variations for the new structure. The walls were already up, the roof on, and the engine was being brought in through the yet vacant opening for doors, when on August 7th, 1903, a violent storm of wind took off the roof and caused the fall of the wall and consequent death of the boilermaker, Valiquette.

The defendant disclaimed liability, pleading that he had employed both a skilful architect and a contractor of experience; it was pointed out that the duty rests upon the person under whose control and for whose purpose the structure is maintained to use reasonable care and skill that no danger result to employees; and that the employment of a competent architect and an experienced builder will not protect the owner of there be carelessness in any other respect. In other words the duty is not a personal but a general or absolute one and he cannot screen himself behind his contractor.

It was further pleaded in defence that the storm being in the nature of a hurricane or tornado, was such that it is unreasonable to expect provision to be made against it, precaution was taken against all likely dangers, but who could always be prepared against an event which occurs only once in years? The court held that precaution against such a storm does not come within the duty of reasonable care resting upon the defendants, but is rather an act of God or force which could not be reasonably foreseen or provided against. Held also that there is a difference in the degree of care called for in an unfinished and a finished building. The incomplete building could not be as safe as a completed structure, and it was not reasonable to claim that the doors and windows should be closed in against the storm. The case is therefore dismissed with costs against the plaintiffs. 39 S. C. R.—1.

SUNKEN VESSEL—DUTY OF OWNER.

Re "The Snark."—The defendants were owners of a large barge called "The Snark," which was by no fault of theirs sunk in the River Thames, England, on August 1st, 1897. They thereupon warned the harbor authorities who put proper lights upon the wreck temporarily, and in the course of a few days the defendants contracted with a salvage man of some experience to raise the barge. The authorities then removed their lights and the defendants provided the contractor with another barge to carry on the salvage operations. The contractor anchored this craft beside the wreck as a warning to passing ships, but did so in such manner that she swung out to stream and lay at some distance instead of hardby. A German steamer coming in saw the anchored barge and gave her ample berth but in doing so ran upon the wreck.

The rule of law is that the owner of a wrecked vessel may abandon her in which case no responsibility rests upon him to remove the derelict nor yet to warn others except that when in navigable rivers he must for protection of the public warn proper authorities; but in this case the owners do not abandon their property but place a contractor in charge of same. The defendants plead that having placed a skilful salvager in control of the sunken barge they are excused from further responsibility. They claim that the salvage being in charge of an independent contractor they have no say as to the manner in which he carries on the work and no responsibility for the results.

The court points out that after the wreck they were under obligation to protect other ships from injury by the hidden wreck. The defendants could not divest themselves of this obligation by the employment of a salvage contractor, for they were still bound to see that the contractor did for them what they themselves were bound to do, namely, mark the position of the wreck. The owners of the sunken craft have failed in discharging this liability and are therefore liable.—1899, Probate 74.

SPRINKLER SYSTEM—DAMAGE FROM FROST, INTERPRETATION OF CONTRACT.

Boulter, Davies & Company vs. Canadian Casualty and Boiler Insurance Company.—The plaintiffs, who were wholesale merchants in the city of Toronto, applied to defendants for, and obtained a policy insuring property in their warehouse as follows:—"The Canadian Casualty and Boiler Insurance Company does insure Boulter, Davis & Company, ... against all **immediate** loss or damage to property of the assured, ... situate within their premises by the accidental discharge or leakage of water from automatic sprinkler system now erected in said building. .....This policy does not cover loss or damage resulting from freezing."

This policy had been in force for some months and was still extant when the water in a pipe connected with the sprinkler system froze; pipe then burst at the seam, and when the flow resumed the discharge of water caused the damage complained of.

The insurance company argued that the exception as to damage resulting from freezing saved them from liability, but it was argued on the other side that as the insurance is against **immediate** loss the exception must also be as to immediate loss, for the contract must be interpreted as one consistent whole. Now the damage was certainly an immediate result of the leakage or discharge, and the only question is as to whether the company is protected by the exception as to damage resulting from freezing.

But the loss was not an immediate result of the freezing; that in itself caused no damage but the bursting of the pipe, and the flooding and consequent damage which followed were secondary or indirect results, and do not come within the saving clause. Held therefore that the insurance company are liable under their policy and must pay the loss.—39. S. C. R., 558.

DRAINAGE: DOMINANT TENEMENT—ABATEMENT OF NUISANCE.

O'Cain vs. Audette.—The defendant who was the owner of certain lands in the Province of Quebec, erected upon his premises a large ice house and proceeded to stock the same and carry on business as a wholesale ice merchant. In erecting the structure no sufficient provision was made for drainage with the consequence that the water from melting ice proved to amount in one season to some 50,000 gallons escaped and though it did not flow upon the surface it found