

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH
DECISIONS.

(Registered in accordance with the Copyright Act.)

**MUNICIPALITY—HIGHWAY—DANGEROUS LOCALITY—REMOVAL OF PROTECTING
FENCE—MISFEASANCE.**

Whyler v. The Brigham R.D. Council (1901) 1 Q.B. 45, was an action brought against the defendants a highway authority, to recover damages for the death of the plaintiff's husband, alleged to have been caused by the wrongful act of the defendants. The deceased was driving along a road and by accident drove into a ditch and was drowned. At the point of the road where the accident took place a fence had been formerly erected to protect the public using the highway which was dangerous owing to its liability to be flooded by a stream that ran by the side of the road. The stream had been diverted, but the ditch which had been formerly the bed of the stream was left and was liable to be filled in time of flood, and the water then flooded over the road. After the diversion of the stream and the fence having fallen out of repair, the defendants acting on the report of their manager, that it was no longer necessary, had it removed, and ordered the erection of a short length at each end. After the old fence had been removed and before the erection of the new fence, the road was flooded, and the deceased coming along the road drove into the ditch and was drowned. The jury found that the removal of the fence in the way it was done, was inconsistent with a proper regard for the safety of persons using the road, and judgment was given by Wills, J., who tried the case, for the plaintiffs, which was affirmed by the Court of Appeal (Smith, M.R. and Collins and Stirling, L.JJ.). It was argued that the act of the defendants was one of nonfeasance, for which no action would lie; but the Court of Appeal held the pulling down of the old fence was an act of misfeasance.

PARTNERSHIP—CONTRACT WITH PARTNERSHIP—PARTNER, DEATH OF.

In *Philips v. Allhambra Palace Co.* (1901) 1 Q.B. 59, the question involved is the effect of the death of a partner upon a contract