

water, but municipal corporations who have built under a highway a culvert for the drainage of this surface water in ordinary course are not liable because the water when suddenly discharged rushes through this culvert and causes damage to lands on the other side of the highway.

Judgment of SIR THOMAS GALT, C.J., reversed.

*Garrow*, Q.C., for the appellant.

*Aylesworth*, Q.C., for the respondent Loutit.

*Cassels*, Q.C., and *Holt* for the respondents, the corporations.

[Feb. 28.]

HANLEY *v.* CANADIAN PACKING CO.

*Sale of goods—Quantity—Description—"Carload."*

The defendants agreed to buy from the plaintiff a "carload of hogs" at a rate per pound, live weight. The plaintiff shipped a "double-decked" carload, and the defendants refused to accept this, contending that a "single-decked" carload should have been shipped. There was a conflicting evidence as to the meaning given in the trade to the term "carload of hogs," and it was shown that hogs were shipped sometimes in the one way and sometimes in the other.

*Held*, (HAGARTY, C.J.O., dissenting) that the plaintiff had option of loading the car in any way in which a car might be ordinarily or usually loaded, and that he having elected to ship a double-decked carload the defendants were bound to accept.

Judgment of the County Court of Middlesex reversed.

*J. F. Hellmuth* and *W. C. Fitzgerald* for the appellants.

*H. Elliott* for the respondents.

[Feb. 28.]

MUSKOKA MILL & LUMBER CO. *v.* McDERMOTT.

*Timber—License—Trespass—Crown Lands Department—R.S.O., c. 28.*

The legal right of a license of timber limits under a license issued by the Ontario Crown Lands Department ceases (except as to the matters specially excepted by the Act) at the expiration of the license, and there is no equitable right of renewal capable of being enforced against the Crown, or sufficient to uphold a right of action for trespass committed after the expiration of the license and before the issue of a renewal.

The insertion in an expired license of a lot omitted by error does not confer upon the licensee such a title as enables him to maintain an action for trespass committed on the omitted lot.

Judgment of the District Court of Muskoka reversed.

*Moss*, Q.C., for the appellants.

*R. S. Cassels* for the respondents.

[Feb. 28.]

KENNY *v.* CALDWELL.

*Evidence—Survey—Plan—Description.*

The description of a lot prepared for and used by the Crown Lands Department in framing the patent is admissible evidence to explain the metes and bounds of that lot.