
ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH
DECISIONS.

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NEGLIGENCE—PUBLIC BODY—CONTRACT TO EXECUTE WORKS FOR PUBLIC
BODY—LIABILITY OF EMPLOYER FOR NEGLIGENCE OF CONTRACTOR—PAYMENT
INTO COURT BY CO-DEFENDANT.

Penny v. Wimbledon Council (1898) 2 Q.B. 212, is one of that class of cases, in which an employer is held liable for the negligence of his contractor. The action was against a municipal corporation and its contractor for the repair of a highway, to recover damages for the negligence of the contractor in carrying out his contract, by leaving a heap of soil and grass on the road unlighted and unprotected, over which the plaintiff fell and injured herself, in the dark. The action was tried before Bruce, J., who held that the corporation, having control of the works, were liable for the negligent acts which their contractor had committed. Another question in the case was one of practice arising on the fact that the defendants delivered separate defences both denying liability, and the contractor paid into Court £75 in satisfaction of the plaintiffs' claim. This payment was referred to in the defence of the corporation, who alleged that the money so paid in was sufficient to satisfy the plaintiffs' claim. The damages of the plaintiff having been assessed at £50, the question was, whether any, and what, judgment could be awarded against the corporation. Bruce, J., held that though they could have joined with their co-defendant in the defence of payment into Court, so as to have made it available for them both, yet as they had not done so, but had chosen to deliver a separate defence, they could not therein avail themselves of the payment into Court by their co-defendant; the defence of the corporation, he therefore held, simply amounted in law to a denial of liability, and as on that defence they had failed, he gave judgment against them, as the damages had been obtained from the other defendants, simply for costs.