

covery of some defects in B.'s work, the defendants refused, although they had taken possession of the building, to pay the balance, on the ground that the roof was not properly done, and that L. was a sub-contractor under B., and that there was no contract under seal with him.

Held, (affirming the judgment of O'Connor, J.,) that the legal effect of this was to consummate a tripartite agreement, by which B. was to give up part of his contract, and L. was to do the work for a specified price: that between the plaintiff L., the defendants and B. there was a novation of contract, so far as the roof was concerned, and as to that L. became the principal and only contractor.

Held, also, that the taking possession, payment on account, &c., was sufficient evidence to justify a finding of an acceptance of the work as an executed contract, or a case "of an actual and *de facto* performance of the contract by one party of which the other party has taken, received and enjoyed the benefit." *The Mayor, &c., of Kidderminster v. Hardwick*, L. R. 9 Ex. 18, cited; *Munro v. Butt*, 8 E. & B. 738, distinguished.

A municipal corporation is liable on an executed contract for work done by its order, on its behalf and for its benefit, though there be no agreement under seal, if the thing done were urgently required for the purpose of the corporation, and especially so where the price to be paid is not of large amount: *Robins v. Brockton*, 7 O. R. 481, referred to. *Lawrence v. The Corporation of the Village of Lucknow*, 421.

6. *Municipal law—Livery stable—Power to regulate and license in cities having police commissioners—* 49 Vic. ch. 37, sec. 9 (O.)—*Ultra*

vires.]—The board of police commissioners in cities is the body which alone has the power, under 49 Vic. ch. 37, sec. 9 (O.), to regulate and license livery stables; and this power includes the power to declare in what localities such stables shall be allowed; therefore, a by-law passed by the corporation of the City of Toronto, a city having a police board, assuming to declare it unlawful for any person to establish or keep such stable unless he shall have procured the consent of the majority of owners and lessees of property situate within the area of 500 feet of such stable, was *held ultra vires*.

Even if not *ultra vires* the by-law would have been objectionable in requiring, as a condition precedent to the granting of the license, that an applicant should procure the consent of a number of persons in the neighbourhood. *Re Kiely*, 451.

See MASTER AND SERVANT, 2.

MUTUAL INSURANCE.

See INSURANCE, 1.

NEGLIGENCE.

See MASTER AND SERVANT, 1.—MUNICIPAL CORPORATIONS, 1, 3.

NOTICE.

To heir, who was also devisee, of conditions of will.]—See WILL, 2.

NOVATION.

See MUNICIPAL CORPORATIONS, 5.