

HON. MR. JUSTICE LEITCH.

NOVEMBER 29TH, 1912.

WALLER v. CORPORATION OF SARNIA.

4 O. W. N. 403.

Negligence—Municipal Corporation—Repair of Pavement—Dangerous Material—Public Place—Lack of Safeguards—Improper Implement—Unskilled Workman—Independent Contractor—Liability of Corporation.

Action by father on behalf of himself and as next friend of his infant son, for damages for personal injuries sustained by the latter through the alleged negligence of defendants' servants. A street of the defendant corporation was being repaired by a contractor "to the satisfaction of and under the supervision of" defendants' engineer. The work of repair involved the ladling of melted asphalt out of a caldron which was set up on a street immediately off the street being repaired, which was one of defendants' principal streets. The ladle used had a wooden handle which gradually became charred, and broke, scattering the melted asphalt about and severely burning the infant plaintiff, a child under seven years of age. The evidence shewed that the work was not guarded in any way, and was calculated to and did, as a matter of fact, attract children. It was further shewn that a ladle with an iron handle in place of a wooden one should have been used.

LEITCH, J., held defendants guilty of negligence, in permitting dangerous material to be handled in a public place without some barrier to keep children away, and in allowing it to be handled by an unskilled workman with an improper implement.

Judgment for father for \$200 damages, and for infant for \$1,000 damages, with costs.

Action by William Waller for himself and as next friend of his son Reginald Waller for damages for personal injuries sustained by the latter through the alleged negligence of defendants' servants.

R. V. LeSeuer, for the plaintiffs.

J. Cowan, K.C., for the defendant.

HON. MR. JUSTICE LEITCH:—On the 30th December, 1908, the corporation of Sarnia entered into a contract under seal with Frank Gutteridge for paving Front street from the north limit of George street to the south limit of Wellington with three-inch creosote wood-block pavement on a concrete foundation.

The work was to be done to the satisfaction of and under the supervision of the town engineer.

The contractor, Gutteridge, covenanted with and guaranteed the corporation that the pavement would continue in perfect condition for five years from the date of completion. The contractor further agreed with the corporation that he