The plaintiffs cannot therefore maintain this action under the Workmen's Compensation for Injuries Act, and they must rely on the other grounds set up in the statement of claim, and per contra the infant plaintiff, not being a workman of defendants, is not embarrassed or deprived of redress, if otherwise entitled thereto, by the application of the common law rule as to negligence of a fellow workman.

The infant plaintiff occupies the much higher position of one of the general public who has come upon premises which are defendants' property quoad this action, at defendants' invitation, on business in which they were concerned.

And for damage done to him either by the personal negligence of defendants or by the negligence of a servant acting within the scope of his employment, defendants are liable: Thomas v. Quartemaine, 18 Q. B. D. at p. 69; Beven on Negligence, 2nd ed., p. 532 et seq.

A municipal corporation may be liable in this capacity of property owner or of one having control of property: Dillon, 4th ed., sec. 985.

And a pathmaster is a servant for whose negligence in the course of his employment defendants would be liable: Stalker v. Township of Dunwich, 15 O. R. 342.

The answers of the jury find negligence on the part of defendants, and negative the question as to volenti non fit injuria, and find against negligence or contributory negligence of plaintiff. We are not favoured with a copy of the charge, but the evidence was no doubt placed before them fairly, and it was certainly placed before them in such a manner that defendants have not seen fit to complain thereof. The jury, therefore, considered the matter in all its bearings with regard to the warning and alleged warning to plaintiff and in other respects, and I do not think their findings ought to have been set aside.

The only difficulty that arises is on the answer to the 3rd question.

Having regard to the evidence and to what the learned Judge's charge must have been, the answer seems to me to be pregnant with the suggestion that the pit was dangerous and unfit for plaintiff to work in.

In this sense there is perhaps no particular cogency in the use of the word "boy" except to designate the infant plaintiff, as the jury knew that both he and his father were parties to the action.

But if the jury did mean to say that more care ought to have been adopted by the pathmaster in view of this plaintiff's tender years the value of the finding is not thereby impaired.