

mining, he may have it, without costs. If not, the action will be dismissed without costs and without prejudice to any further action the plaintiff may see fit to bring under the agreement of the 16th April, 1913, alone or in association with Loring and O'Connell, against the defendants or any of them. The counterclaims of the defendants will also be dismissed without costs and without prejudice to their rights to set them up in any future actions. W. N. Tilley, K.C., and J. Lorn McDougall, for the plaintiff. I. F. Hellmuth, K.C., for the defendants.

LAMBERT V. CITY OF TORONTO—MULOCK, C.J.Ex.—FEB. 9.

Indemnity—Negligence — Covenant — Agreement between Municipal Corporation and Electric Company.—Action by the administratrix of the estate of one Kenneth Lambert, deceased, against the Corporation of the City of Toronto and the Interurban Electric Company Limited, to recover damages for the death of Lambert, caused, it was alleged, by the negligence of the defendants. The action was tried with a jury at Toronto. On the findings of the jury, the learned Chief Justice directed judgment to be entered for the plaintiff against both defendants for \$2,700 and costs. The defendant city corporation contended that, by virtue of a memorandum of agreement, bearing date the 15th October, 1901, made between the Corporation of the Township of York and the Humber Power and Light Company, and a certain other agreement, bearing date the 3rd April, 1905, made between the York corporation and the Stark Telephone Light and Power System, the Toronto corporation was entitled to be indemnified by its co-defendant, the Interurban Electric Company Limited, in respect of the damages recovered by the plaintiff. The learned Chief Justice said that, according to the finding of the jury, the negligence of the city corporation, in not having properly insulated its guy-wires, was one of the causes of the accident which led to the death of Lambert. The indemnity covenant did not indemnify the city corporation against its own negligence; and, therefore, the city corporation was not entitled to indemnity from its co-defendant. B. N. Davis, for the plaintiff. C. M. Colquhoun, for the defendant city corporation. D. Inglis Grant, for the defendant company.