

SEPTEMBER 14TH, 1903.

DIVISIONAL COURT.

## STRUTHERS v. CANADIAN COPPER CO.

*Master and Servant—Liability of Master to Pay for Medical Attendance on Servant—Privity — Implied Authority—“Hospital Fund.”*

Appeal by defendants from judgment of MEREDITH, J., at North Bay, as regards \$280, for which he directed judgment to be entered against the defendants, not to be paid by them personally, but out of what was called the “hospital fund.” The claim of plaintiffs, who were practising physicians and surgeons having a hospital at Sudbury, was for surgical operations and surgical and medical attendance upon three men who were employed at the works of defendants and were injured while so employed. Menard, one of the men, was employed by defendants, but the other two were not; they were employees of a contractor for defendants, named McKinnon. The hospital fund was made up of contributions retained out of the men’s pay, and was designed to provide medicine and medical attendance for the men when they required it. McKinnon’s men were, it was admitted, entitled to the benefit of the fund. Menard was brought to plaintiffs for treatment by the master mechanic in the department of defendants’ works in which Menard was employed, and the master mechanic, according to plaintiff Struthers, said that defendants “would be good” for Menard. The other two men were brought by McKinnon, Dr. Coleman, one of defendants’ physicians in charge, accompanying him when Roy was brought.

W. Nesbitt, K.C., for appellants.

A. B. Aylesworth, K.C., for plaintiffs.

THE COURT (MEREDITH, C.J., MACLAREN, J.A.) held that there was nothing which entitled plaintiffs to recover as upon an express or implied retainer or employment of them by defendants to perform the services which were rendered, on the credit of defendants. One occupying the position of master mechanic in the employment of another has no implied authority to pledge his employer’s credit for such services as were performed by plaintiffs, and there was no evidence that the man who brought Menard to plaintiffs had any express authority to do so. So with Dr. Coleman: and