QUEEN'S BENCH DIVISION.

Full Court.]

MURPHY v. CITY OF OTTAWA AND DOYLE.

Municipal corporation—Contract in writing for construction of sewer—Contractor and sub-contractor—Master and servant—Interference by corporation through inspector—Joint wrong doers—Liability—Compensation.

The corporation of the city of Ottawa contracted with defendant, Doyle, by agreement in writing to lay down sewer pipes on certain streets in the city of Ottawa, and by their inspector the corporation exercised superintendence over the work as it progressed.

Doyle employed one McCallum to engage workmen and oversee the work. McCallum engaged Murphy, the husband of the plaintiff.

During the progress of the work the sides of the sewer caved in through the faulty and negligent shoring of the walls of the sewer, thereby causing the death of Murphy.

Held, that under the evidence the corporation were not liable; that no recovery ought to have been had against either of the defendants, as there was no evidence from which it could have been reasonably inferred that the deceased was ignorant of the dangerous character of the work he was engaged in, and that he had quite as much knowledge and means of knowledge of its dangerous character as his master, and with such knowledge voluntarily engaged in it. But as defendant Doyle had not moved against the verdict found against him it was therefore allowed to stand.

Held, also, that the corporation by their inspector had not so interfered with the conduct of the work by the deceased as to assume personal control over the deceased within the opinion of Gifford, L.J., in *Stephens* v. *Police Commissioners*, 3 Court of Sessions Cases, 535.

Held, also, that the action, being founded on the relationship of master and servant, both defendants could not be held liable, and that the plaintiff, by retaining her judgment against Doyle, had elected to treat the wrongful act or omission as his, and could therefore have no recourse against the corporation.

McCarthy, Q.C., for motion.

Lount, Q.C., and *Marsh*, contra.

DUNKIN v. COCKBURN.

Timber limits—Rights of licensees—Free grants.

Owners of timber limits have no right by statute or order in council after the issue of patent to haul their timber or logs over the uncleared portion of any land not covered by their timber license and originally located as a free grant.

Kerr, Q.C., and *Paterson*, for motion.

McCarthy, Q.C., and *Falconbridge*, Q.C., contra.

STRATTON v. CITY OF TORONTO.

In an action for damages for injury caused by negligent driving, it appeared that a servant of the defendants, on his way for a wrench for which he had been sent for the purpose of shutting off the water from a street hydrant which had burst, without the knowledge or consent of the defendants, wrongfully took posses ion of a horse and buggy belonging to the defendants' City Commissioner, and therewith caused the injury complained of.

Held, that the defendants were not liable.

F. Wright, for plaintiff.

McWilliams, contra.

THE QUEEN v. YOUNG.

Canada Temperance Act—Police magistrate.

Defendant was convicted at the town of Perth by and before the police magistrate for the south riding of the county of Lanark for selling, in the said town of Perth, intoxicating liquor, contrary to the Canada Temperance Act, 1878.

The authority of the police magistrate was derived from a commission appointing him police magistrate for the south riding of the county of Lanark, as constituted for the purposes of representation in the Legislative Assembly of Ontario.

The same magistrate had been a few weeks previously, by a separate commission, appointed police magistrate for the north riding