

defendants, the responsibility for which they could not escape by delegating it to an independent contractor. . .

[Reference to Halsbury's Laws of England, vol. 21, secs. 796, 797; *Dalton v. Angus* (1881), 6 App. Cas. 740, 829; *Penny v. Wimbledon Urban District Council*, [1898] 2 Q.B. 72; *Holli-day v. National Telephone Co.*, [1899] 2 Q.B. 392, 398; *Clements v. County Council of Tyrone*, [1905] 2 I.R. 415, 542.]

It was contended on behalf of the defendants that what occurred here was not something in connection with the actual doing of the work, but was of a casual and collateral character. I am unable to agree with this contention. It is perhaps difficult, upon the authorities, to state in any general way just what is meant by casual and collateral. What the man was doing here was something necessary to be done in furtherance of the work of repair. See also *Ballentine v. Ontario Pipe Line Co.* (1908), 16 O.L.R. 654, 662; *Hardaker v. Idle District Council*, [1896] 1 Q.B. 343; *Kirk v. City of Toronto* (1904), 8 O.L.R. 730; *Valiquette v. Fraser* (1907), 39 S.C.R. 1; *Longmore v. J. D. McArthur Co.* (1910), 43 S.C.R. 640.

As to any necessity for a notice of action, I do not think the cases cited by the appellants' counsel, referring to actions for damages arising out of the nonrepair of streets, apply. This is not an action for damages against the defendant corporation in consequence of its liability to repair highways, but an action for damages in consequence of negligence in the doing of repairs.

The defence of negligence on the part of the plaintiff Reginald Waller was not made out.

I think the appeal must be dismissed with costs.

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## HIGH COURT DIVISION.

HODGINS, J.A.

MARCH 1ST, 1913.

### FAIRWEATHER v. CANADIAN GENERAL ELECTRIC CO.

*Master and Servant—Death by Drowning of Foreman of Power-house—Necessary Work Done for Benefit of Master—Scope of Foreman's Duty—Negligence—Defective Plant or System—Dangerous Work—Absence of Safeguards—Liability at Common Law and under Workmen's Compensation for Injuries Act—Voluntary Assumption of Risk—Contributory Negligence—Evidence—Findings of Trial Judge.*