

THE
ONTARIO WEEKLY REPORTER.

(TO AND INCLUDING JUNE 14TH, 1902.)

VOL. I.

TORONTO, JUNE 19, 1902.

No. 23.

JUNE 12TH, 1902.

DIVISIONAL COURT.

BOCK v. TOWNSHIP OF WILMOT.

Master and Servant—Municipal Corporation—Pathmaster—Fellow Servant—Caving in of Gravel Pit—Negligence.

Appeal by plaintiffs from order of Judge of County Court of Waterloo setting aside verdict and judgment entered thereon for \$125 in action for damages for injuries sustained by infant plaintiff, S. Bock, 14 years old, and loss occasioned by his father, plaintiff D. Bock, by reason of a bank of gravel falling upon S. Bock, who was at the time in the employment of one Zimmerman. Bock was directed by Zimmerman, who was liable to do statute labour, to do as instructed by one Cassell, the pathmaster, and it is alleged while so engaged was injured. The jury found in answer to questions that the infant was not guilty of negligence and did not undertake to work in the gravel pit with knowledge of the danger, and did not voluntarily undertake the risk: that the defendants were guilty of negligence which consisted in the pathmaster allowing the boy to work in the gravel pit. The Judge below held that the pathmaster was a fellow servant with S. Bock, and defendants were not liable.

E. E. A. DuVernet, for plaintiffs.

A. Millar, for defendants.

The judgment of the Court (FALCONBRIDGE, C.J., STREET, J., BRITTON, J.) was delivered by

FALCONBRIDGE, C.J.:—I do not think that under the circumstances the relationship of employer and employed existed between the township and the infant plaintiff. The latter was a servant in husbandry to John Zimmerman. He was not hired by the defendants; defendants had no power of dismissing him; he was not paid by defendants; and neither they nor their pathmaster gave him any particular order: *Rourke v. White Moss Colliery Co.*, 2 C. P. D. 205; *Jones v. Liverpool*, 14 Q. B. D. 890; *Donovan v. Laing*, 94 L. T. Jour. 436.