The action was instituted for $10,000 damages for loss sustained in 1862 by the Corporation laying a main sewer through the greater part of McGill Street, and in front of the plaintiff's shoe store. While this sewer was being constructed the street was for a long time blocked up with mud and earth from the excavation; and the plaintiff's business as a shoemaker greatly interfered with, his receipts were diminished, and his customers obliged to go elsewhere. The defendants pleaded that the work had been carried on with diligence, so that the plaintiff, even if he had sustained loss, could not recover. The action was dismissed in the Superior Court on the ground that the defendants were not guilty of negligence or of any acts rendering them in law liable for damages, and that they had used all possible care and diligence in completing the work. The plaintiff appealed.

BADGLEY, J. This is a case of some importance with reference to damages. In 1862, the Corporation of Montreal determined to construct a tunnel, and with this object entered into a contract with Patrick White. The work commenced in August, and the material from the excavation was thrown up, encumbering both the roadway and foot pavement. After some time, the Corporation being dissatisfied with the progress made, protested the contractor that they would employ other contractors unless the work was pushed on with more speed. A second and more formal protest was subsequently served in the end of October, and on the following day the Committee took the work out of White's hands, and a new contract similar to the first was entered into with Valin & Barbeau for the completion of the work. In the meantime, the plaintiff, a shoemaker, doing a large retail business, and other residents in the street, complained of the serious loss entailed upon them by the blocking up of the street. When the work was proceeding near the plaintiff's shop, an accident occurred by the falling in of the sides of the trench, which caused much difficulty and delay. Evidence of the injury suffered by the plaintiff is afforded by the protests of the Corporation. The falling in of the sides of the excavation caused by the quicksand is no excuse, for this might have been provided against. The defendants, however, have urged that the work was done by contract, and that the contractor was not their servant. On this point the doctrine is that a person employing a contractor is not liable for the negligence of the contractor, while a master is liable for the negligence of his servant. But there is this modification of the general doctrine, that where a man keeps control over the mode of work, there is no difference between his liability and that of a master. Now here the Corporation reserved to themselves the control of the work; the contractors were bound to follow their directions in doing the work, and the relation between them was therefore that of master and servant. *Qui facit per alium facit per se:* he who makes choice of an unskilful person as his servant is liable for his choice. It only remains, then, to settle the amount of damage. The plaintiff has put in evidence his sales in 1861, 1862, and 1863, to show the loss of receipts after the obstruction commenced. The Court is not disposed to allow the plaintiff more than the loss of profits during the extra time the obstruction lasted, owing to the negligence of the contractors. This amount has been fixed at $273.70, for which judgment will go in favour of the appellant, with costs of both Courts.

MONDELET, J. No one can doubt that the facts justify a judgment against the Corporation.

DUVAL, C. J. I have come to the same conclusion. The judgment is:

Considering that it has been proved that the respondents during the execution and construction of the works mentioned in the declaration of the appellant, (which said works the respondents were by law authorized to make) were guilty of negligence and of acts rendering them liable in damages to the appellant, by obstructing for the period of four months, from the middle of September, 1862, to the middle of January, 1863, full and perfect access to the shop and premises, and causing him loss and injury therefrom: Considering that the damages have been proved to amount, for the said space of time, to $273.70, etc. Judgment reversed, and judgment for said amount in favor of the plaintiff.

DRUMMOND, J., concurred.