

fault of a deputy inspector; and that such default was proved.

Crescor, Q.C., for the plaintiffs.

Osler, Q.C., and *Wink*, for the defendant.

HAMILTON PROVIDENT LOAN CO. v.
CAMPBELL.

Interpleader—Right to crops.

The plaintiffs were mortgagees of land on which the crops in question were grown. On April 15th, 1882, the mortgagor, C., being in default, plaintiffs, in consideration of C. giving them a chattel mortgage on some of his goods, agreed that he should remain in possession as if there had been no default. In June plaintiffs took proceedings for ejectment against the land, recovered, on the 30th September, judgment by default, and on same day placed a writ of *hab. fac. pos.* in sheriff's hands, who took possession thereunder. On 2nd July possession had been taken of the land, under the mortgage, on behalf of plaintiffs but it did not appear that they continued in actual possession. On 11th July the defendant obtained a judgment against C. for \$860, and on 17th, execution was placed in sheriff's hands, and he seized and sold the growing crops thereunder. On interpleader to determine the title to the crops on the 17th July,

Held, that on that day the mortgagor, C., was entitled to the possession of the crops as against the plaintiff's, and so, therefore, was the defendant; and that the plaintiff's recovery on the 30th September did not estop defendant from shewing their right to the crops on the day claimed.

Muir, for the plaintiffs.

G. H. Watson, for the defendant.

DUCK V. CORPORATION OF TORONTO.

Municipal corporation—Accident—Negligence—Notice—Drain.

After a block pavement had been laid down on Queen street, one of the most travelled roads in the City of Toronto, a drain, about two and a-half feet wide, was opened out across the street to the street railway track and then tunnelled under the track. It was filled in with loose earth, not rammed down. On Sunday it rained, in consequence of which the earth was washed

down and sunk, leaving a very dangerous hole. On Tuesday or Wednesday some residents in the neighbourhood, seeing its dangerous condition, took some cedar poles and placed them lengthways in the hole. On Thursday night, about nine o'clock, the night being dark, and there being no light at the hole, and the street lamp not being sufficient to disclose the hole, the plaintiff, his wife and another, were driving along the road, and on reaching the place and not seeing the hole, the horse stumbled and fell, and the plaintiff was pitched out of the waggon and injured. The jury found that the accident was caused by the waggon coming in contact with the drain or hole. The defendants, however, urged that the evidence shewed that accident was caused by the waggon coming in contact with the poles, and as they had not put them there they were not liable.

Held, that the fact whether the accident was caused by the drain or the poles, was immaterial, for under the circumstances the defendants must be deemed to have had notice of the condition in which the drain was in at the time of the accident.

Osler, Q.C., and *J. T. Small*, for the plaintiff.
McWilliams, for the defendants.

MORRISON ET AL. V. EARLS.

Promissory note—Syndicate—Partnership—Rescission—Misrepresentation of price of land.

Action on a promissory note for \$1,000, made by defendant to one M. The note was given in payment of the first instalment of the purchase money of a share in a syndicate, formed under an agreement which stated that "We the undersigned hereby covenant, promise and agree with each other to form ourselves into a syndicate" to purchase a lot of 300 acres of land in Manitoba from M. for \$50,000, divided into fifteen shares of \$3,333.33 each, to be paid to the trustee of the syndicate; the expenses of purchasing, advertising, selling, etc., to be borne proportionately by each member according to his shares; appointing M. trustee to form the syndicate; and on completion the members could re-appoint M., or any other person, trustee to carry out the effects of the syndicate. The syndicate was completed and the defendant appointed trustee; and a conveyance of the same made to him. It appeared