

G. M. Clark, for applicants.

D. L. McCarthy, for defendants the Toronto, Hamilton, and Buffalo R. W. Co.

J. G. Farmer, Hamilton, for plaintiff Collins.

D'Arcy Martin, Hamilton, for plaintiff Perkins.

THE MASTER:—The statements of claim are similar. In each case plaintiffs allege that the injuries to the two servants of the defendants the Toronto, Hamilton, and Buffalo R. W. Co. complained of were caused by an explosion in the premises of the railway company of gas furnished to them by the gas company pursuant to an agreement in that behalf.

In the first case paragraph 11 of the statement of claim is as follows: "The defendants are each responsible for the defective condition of the said plant, etc., and the negligent use of the said dangerous and highly explosive gas."

Paragraph 8 of the statement of claim in the Perkins case is identically the same.

It was argued that plaintiffs must elect under the authority of *Hinds v. Town of Barrie*, 6 O. L. R. 656, 2 O. W. R. 995. On the other hand were cited *Symon v. Guelph and Goderich R. W. Co.*, 8 O. W. R. 320; *Norman v. Hamilton Bridge Works Co.*, 9 O. W. R. 300; and *Bullock v. London General Omnibus Co.*, [1907] 1 K. B. 264.

In view of these authorities it does not seem that the order should be made. Here, as in the *Symon* and *Norman* cases, there is a sufficient allegation of a joint liability; whether it can be sustained is not now in question. In the *Bullock* case the plaintiff claimed not only against the two defendants jointly, but also against each separately. This was held to be allowable. The observations of the Lords Justices in that case were, no doubt, obiter only. At the same time they cannot be ignored, especially in view of the remarks of the Master of the Rolls on *Sadler v. Great West R. W. Co.*, [1895] 2 Q. B. 688, [1896] A. C. 450, pointing out that in that case no joint liability was alleged, but only two independent though contemporaneous torts. This is true also of *Hinds v. Town of Barrie*, as pointed out by Osler, J.A. It is to be wished that this or some similar case be taken to the Court of Appeal so that there may be