

performing his duty to aid in raising the oven door in the usual and customary way, and in the manner which would enable him to do it most efficiently. Even if he could have stood a little out from under the weights, by the fall of one of which he was injured, he could not then have pulled so well; and he had a right to believe that they were so secured that no danger was incurred by him therefrom. Nor is the fact that the laborers, of whom the plaintiff was one, endeavored to raise the door without waiting for the fireman, who had gone for a bar to pry it up, to be treated as showing a want of due care on his part. There remains the question whether there was any evidence of negligence on the part of the defendant. That the "S" hook, by the rupture of which the injury occurred, was defective, was clearly proved. The master does not warrant to the workman the safety of the appliances; but he is obliged to use all reasonable care consistent with the nature and extent of his business, that such appliances are proper and suitable. He is not responsible for hidden defects that could not have been discovered on the most careful inspection. *Ladd v. New Bedford R. R.*, 119 Mass. 412; *Holden v. Fitchburg R. R.*, 129 Mass. 268-277. The testimony of Morrison was: 'That the hook now looked as if there was a break previous to the main break;' and of Henry: 'That if a man made a careful examination of the hook, after making it he might possibly, or if a man familiar with hooks examined it, he might perhaps, have discovered the flaw which caused the accident; but that these flaws would not be visible on an ordinary inspection.' The fact that there was actually a visible crack or flaw in the hook above the flaw at the place of rupture, and that, as testified, iron will usually break in the weakest spot, taken together tended to show that a careful inspection would have revealed the weakness of the hook."

The Report of the Commission for the consolidation of the Statutes affecting the Dominion has been completed, and submitted to Parliament for legislative action. The Report fills two thick volumes, comprising 178 chapters and 2,258 pages.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, NOV. 26, 1884.

Before MONK, RAMSAY, TESSIER, CROSS, JJ.

LA CORPORATION DE LA PAROISSE DE STE. ANNE DU BOUT DE L'ISLE (def. below), Appellant, and REBURN (plff. below), Respdt.

Servitude—Water Course—Procès-verbal.

Although it is within the attributes of municipalities to make by-laws and *procès-verbaux* for the opening of water-courses, and a person injured thereby may have exercised his right of appeal to the county council, and the *procès-verbal* has been confirmed by the county council, nevertheless such confirmation is not a bar to an action to set aside the *procès-verbal* where it orders something to be done which is in itself contrary to law. And so, where the effect of a water-course established by *procès-verbal* was to aggravate greatly the servitude which the plaintiff's land had to bear owing to its being lower than that of his neighbours, it was held, that he was entitled to bring suit to have the *procès-verbal* set aside, although he had appealed previously to the county council and the *procès-verbal* had been confirmed thereby.

Judgment confirmed, Ramsay, J., diss.

Saint-Pierre & Scallon for appellant.

Laflamme, Huntington, Laflamme & Richard for respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, DEC. 9, 1884.

Before DORION, C.J., MONK, RAMSAY, TESSIER and CROSS, JJ.

BLACK et al. (defts. below), Appellants, and WALKER (plff. below), Respondent.

Simulated deed—Action of third party.

Real estate estimated to be worth about \$1,200 was sold to a person without means for a consideration stated in the deed to be \$3,650. No money was paid, and the vendors remained in possession. The vendee executed a deed of obligation and hypothec in favor of the vendors for the unpaid instalments. Two of these instalments, amounting to \$2,000, were subsequently transferred by the vendors to W. in payment of goods.

Held, that the sale of the property and the