

4. *Baggage transfer company—Employee going through trains for baggage under agreement with railway company—City by-law against soliciting baggage—Ultra vires.*—A city by-law prohibited any person licensed thereunder soliciting any person to take or use his express waggon, or employing any runner or other person to assist or act in concert with him in soliciting any passenger or baggage at any of the "stands, railroad stations, steamboat landings, or elsewhere in the said city," but persons wishing to use or engage any such express waggon or other vehicle, should be left to choose without any interference or solicitation. An employee of defendants with the consent of a railway company, and under instructions from his employer, boarded an arriving passenger train at one of the outlying city stations on its way to the Union station, and went through the cars calling out "baggage transferred to all parts of the city," and having in his hands a number of the transfer company's checks. No baggage was taken at the time.

*Held*, that there was no breach of the by-law, but merely the carrying out of the defendants' agreement with the railroad company; and further that the railroad train did not come within any of the places mentioned in the by-law.

*Per Rose, J.*—If the by-law in terms had covered this case, it would have been *ultra vires*.—*Regina v. Ferral*, 117.

5. *Accident—Want of repair of street—Contract with street railway company to keep in repair—Liability of corporation—Remedy over against street railway company—Evidence of contributory negligence.*—By 36 Vic. ch. 99, (O.), the London Street Rail-

way Company was incorporated, by sec. 13 of which the city of London were authorized to enter into an agreement for the construction of the railway on such of the streets as might be agreed on, and for the paving, repairing, &c., of the same. By sec. 14 the city was also empowered to pass by-laws to carry such agreement into effect, and containing all necessary provisions, &c., for the conduct of all parties concerned, including the company, and for enforcing obedience thereto. A by-law was passed by the city providing for the repair of certain portions of the streets by the street railway company who were to be liable for all damage occasioned to any person by reason of the construction, repair, or operation of the railway, or any part thereof, or by reason of the default in repairing the said portions of the streets, and that the city should be indemnified by the company for all liability in respect of such damage. An accident having happened to plaintiff by reason of said portions of said streets being out of repair, an action was brought by the plaintiff against the city of London therefor. After action brought, and more than six months after the occurrence of the accident, on the application of the city of London, the street railway company were made party defendants.

*Held*, that notwithstanding the said legislation, by-law and agreement, the city was liable under sec. 531 of the Municipal Act, R. S. O. ch. 184 to the plaintiff for the damage he had sustained; but that they had a remedy over against the street railway company.

*Held*, also, following *Anderson v. Canadian Pacific R. W. Co.*, 17 O. R. 747, that the six months' limitation clause in the Railway Act did